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1976 EDITION

SUPPLEMENT III

CONTAINING THE GENERAL AND PERMANENT LAWS OF THE UNITED STATES, ENACTED DURING THE 95TH CONGRESS AND 96TH CONGRESS, FIRST SESSION

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VOLUME TWO

TITLE 19—CUSTOMS DUTIES

TO

TITLE 41—PUBLIC CONTRACTS

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*1. General Provisions.
2. The Congress.
*3. The President.
*4. Flag and Seal, Seat of Government, and the States.
*5. Government Organization and Employees.
*6. Surety Bonds.
7. Agriculture.
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*This title has been enacted as law.
† This title has been eliminated by the enactment of Title 10.
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PREFACE

This third supplement to the 1976 edition of the United States Code has been prepared and published pursuant to section 285b of Title 2 of the Code. It contains the additions to and changes in the general and permanent laws of the United States enacted during the Ninety-fifth Congress and the Ninety-sixth Congress, First Session. This supplement together with the 1976 edition establishes prima facie those laws in effect on January 8, 1980, except that Titles 1, 3, 4, 5, 6, 9, 10, 11, 13, 14, 17, 18, 23, 28, 32, 35, 37, 38, 39, 44, and subtitle IV of 49, having been enacted into law, establish legal evidence of the law contained in those titles.

This supplement continues the practice of setting out notes captioned "Section referred to in other sections". These notes have been inserted following each section that is referred to in the text of another section, indicating the section that contains the internal reference. In addition, there is included in the Tables a Table of Internal References which consolidates all internal references contained in the individual "Section referred to in other sections" notes appearing in this supplement.

This supplement has been prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staffs of the publishing company and of the Office of the Law Revision Counsel, and by the Government Printing Office.

Thomas P O'Neill Jr.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 8, 1980.*

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5. Special and Incentive Pays.
7. Allowances.
9. Leave.
10. Payments to Missing Persons.
11. Payments to Mentally Incompetent Persons.
13. Allotments and Assignments of Pay.
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11. Compensation for Service-Connected Disability or Death.
13. Dependency and Indemnity Compensation for Service-Connected Deaths.
15. Pension for Non-Service-Connected Disability or Death or for Service.
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17. Hospital, Nursing Home, Domiciliary, and Medical Care.
19. Insurance.
21. Specially Adapted Housing for Disabled Veterans.
23. Burial Benefits.
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31. Vocational Rehabilitation.
32. Post-Vietnam Era Veterans' Educational Assistance.
33. [Repealed].
34. Veterans' Educational Assistance.
35. Survivors' and Dependents' Educational Assistance.
36. Administration of Educational Benefits.
37. Home, Condominium, and Mobile Home Loans.
39. Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces.
41. Job Counseling, Training, and Placement Service for Veterans.
42. Employment and Training of Disabled and Vietnam Era Veterans.
43. Veterans' Reemployment Rights.

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51. Applications, Effective Dates, and Payments.
53. Special Provisions Relating to Benefits.
55. Minors, Incompetents, and Other Wards.
57. Records and Investigations.
59. Agents and Attorneys.
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PART V—BOARDS AND DEPARTMENTS

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73. Department of Medicine and Surgery.
75. Veterans' Canteen Service.

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

81. Acquisition and Operation of Hospital and Domiciliary Facilities; Procurement and Supply.
82. Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions.
83. Acceptance of Gifts and Bequests.
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1. Postal Policy and Definitions.
2. Organization.
4. General Authority.
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10. Employment Within the Postal Service.

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PART II—PERSONNEL—Continued

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12. Employee-Management Agreements.

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20. Finance.
22. Convict Labor.
24. Appropriations and Annual Report.
26. Debts and Collection.

PART IV—MAIL MATTER

30. Nonmailable Matter.
32. Penalty and Franked Mail.
34. Armed Forces and Free Postage.
36. Postal Rates, Classes, and Services.

PART V—TRANSPORTATION OF MAIL

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2. Capitol Building and Grounds.
2A. National Archives.
3. Public Buildings and Works Generally.
4. The Public Property.
5. Hours of Labor and Safety on Public Works.
6. Acquisition of Sites for and Construction of Public Buildings.
7. Acquisition of Land in District of Columbia for Use of United States by Condemnation Proceedings.
8. Emergency Public Works and Construction Projects.
9. Non-Federal Public Works.
10. Management and Disposal of Government Property.
11. Real Property Transactions by Military Departments.
12. Construction, Alteration, and Acquisition of Public Buildings.
13. National Capital Transportation Program.
14. Safety Standards for Motor Vehicles.
15. Government Losses in Shipment.
16. General Services Administration.
17. Alaska Communications Disposal.
18. National Visitor Center Facilities; Capitol Guide Service.
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1. General Provisions.
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5. Judicial Review of Administrative Decisions.
6. Service Contract Labor Standards.
7. Office of Federal Procurement Policy.
8. Federal Grants and Cooperative Agreements.
9. Contract Disputes.

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1. The Public Health Service [Repealed and Omitted, See Chapter 6A].
1A. The Public Health Service; Supplemental Provisions [Repealed].
2. Sanitation and Quarantine.
3. Leprosy [Repealed].
3A. Cancer [Repealed].
4. Viruses, Serums, Toxins, Antitoxins, Etc. [Repealed].
5. Maternity and Infancy Welfare and Hygiene [Repealed].
6. The Children's Bureau.
6A. The Public Health Service.
7. Social Security.
7A. Temporary Unemployment Compensation Program [Omitted].
8. Low-Income Housing.
8A. Slum Clearance, Urban Renewal, and Farm Housing.
8B. Public Works or Facilities.
8C. Open-Space Land.
9. Housing of Persons Engaged in National Defense.
10. Federal Security Agency [Transferred or Omitted].
11. Compensation for Disability or Death to Persons Employed at Military, Air, and Naval Bases Outside the United States.
12. Compensation for Injury, Death, or Detention of Employees of Contractors with the United States Outside the United States.
13. School Lunch Programs.
13A. Child Nutrition.
14. Development and Control of Atomic Energy [Transferred, See Chapter 23].
15. Disaster Relief [Repealed].
15A. Reciprocal Fire Protection Agreements.
15B. Air Pollution Control.
16. National Science Foundation.
16A. Grants for Support of Scientific Research.
16B. Contracts for Scientific and Technological Research.
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TITLE 42—THE PUBLIC HEALTH AND WELFARE—Continued

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18. Youth Medals.
19. Saline and Salt Waters.
19A. Water Resources Research Program.
19B. Water Resources Planning.
20. Elective Franchise.
20A. Civil Rights Commission.
21. Civil Rights.
22. Indian Hospitals and Health Facilities.
23. Development and Control of Atomic Energy.
24. Disposal of Atomic Energy Communities.
25. Federal Flood Insurance.
26. National Space Program.
27. Loan Service of Captioned Films and Educational Media for Handicapped.
28. Area Redevelopment Program.
29. Juvenile Delinquency and Youth Offenses Control.
30. Manpower Development and Training Program [Repealed].
31. Public Works Acceleration Program.
32. Third Party Liability for Hospital and Medical Care.
33. Community Mental Health Centers.
34. Economic Opportunity Program.
35. Programs for Older Americans.
35A. Community Service Employment for Older Americans [Repealed].
36. Compensation of Condemnees in Development Programs [Repealed].
37. Community Facilities and Advance Land Acquisition.
38. Public Works and Economic Development.
39. Solid Waste Disposal [Transferred or Repealed].
40. Soil Information Assistance for Community Planning and Resource Development.
41. Demonstration Cities and Metropolitan Development Program.
42. Narcotic Addict Rehabilitation.
43. Department of Health, Education, and Welfare.
44. Department of Housing and Urban Development.
45. Fair Housing.
46. Justice System Improvement.
47. Juvenile Delinquency Prevention and Control.
48. Guarantees for Financing New Community Land Development.
49. National Housing Partnerships.
50. National Flood Insurance.
51. Design and Construction of Public Buildings to Accommodate the Physically Handicapped.
52. Intergovernmental Cooperation.
52A. Joint Funding Simplification.
53. Advisory Commission on Intergovernmental Relations.
Chap.
54. Cabinet Committee on Opportunities for Spanish-Speaking People [Omitted].
55. National Environmental Policy.
56. Environmental Quality Improvement.
57. Environmental Pollution Study.
58. Disaster Relief [Repealed or Transferred].
59. National Urban Policy and New Community Development.
60. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Program.
61. Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs.
62. Intergovernmental Personnel Program.
63. Lead-Based Paint Poisoning Prevention.
64. Public Service Employment Programs [Omitted].
65. Noise Control.
66. Domestic Volunteer Services.
67. Child Abuse Prevention and Treatment and Adoption Reform.
68. Disaster Relief.
69. Community Development.
70. Mobile Home Construction and Safety Standards.
71. Solar Energy.
72. Juvenile Justice and Delinquency Prevention.
73. Development of Energy Sources.
74. Nonnuclear Energy Research and Development.
75. Developmentally Disabled Assistance and Bill of Rights.
76. Age Discrimination in Federally Assisted Programs.
77. Energy Conservation.
78. National Petroleum Reserve in Alaska.
79. Science and Technology Policy, Organization and Priorities.
80. Public Works Employment.
81. Energy Conservation and Resource Renewal.
82. Solid Waste Disposal.
83. Energy Extension Service.
84. Department of Energy.
85. Air Pollution Prevention and Control.
86. Earthquake Hazards Reduction.
87. Water Research and Development.
88. Uranium Mill Tailings Radiation Control.
89. Congregate Housing Services.
90. Neighborhood and City Reinvestment, Self-Help and Revitalization.
91. National Energy Conservation Policy.
92. Powerplant and Industrial Fuel Use.
93. Emergency Energy Conservation.

TITLE 43—PUBLIC LANDS

1. Bureau of Land Management.
2. Geological Survey.
3. Surveys.
4. District Land Offices.

TITLE 43—PUBLIC LANDS—Continued

Chap.
5. Land Districts.
6. Withdrawal from Settlement, Location, Sale, or Entry.
7. Homesteads.
8. Timber and Stone Lands [Repealed].
8A. Grazing Lands.
9. Desert-Land Entries.
10. Underground-Water Reclamation Grants [Repealed].
11. Discovery, Development, and Marking of Water Holes, Etc., by Government.
11A. Board on Geographic Names.
12. Reclamation and Irrigation of Lands by Federal Government.
12A. Boulder Canyon Project.
12B. Colorado River Storage Project.
13. Federal Lands Included in State Irrigation Districts.
14. Grants of Desert Lands to States for Reclamation.
15. Appropriation of Waters; Reservoir Sites.
16. Sale and Disposal of Public Lands.
17. Reservation and Sale of Town Sites on Public Lands.
18. Survey of Public Lands.
19. Bounty Lands [Repealed].
20. Reservations and Grants to States for Public Purposes.
21. Grants in Aid of Railroads and Wagon Roads.
21A. Forfeiture of Northern Pacific Railroad Indemnity Land Grants [Omitted].
22. Rights-of-Way and Other Easements in Public Lands.
23. Grants of Swamp and Overflowed Lands.
24. Drainage Under State Laws [Repealed].
25. Unlawful Inclosures or Occupancy; Obstructing Settlement or Transit.
25A. Lands Held Under Color of Title.
26. Abandoned Military Reservations [Repealed].
27. Public Lands in Oklahoma.
28. Miscellaneous Provisions Relating to the Public Lands.
29. Submerged Lands.
30. Administration of Public Lands.
31. Department of the Interior.
32. Colorado River Basin Project.
32A. Colorado River Basin Salinity Control.
33. Alaska Native Claims Settlement.
34. Trans-Alaska Pipeline.
35. Federal Land Policy and Management.
36. Outer Continental Shelf Resource Management.
37. Public Rangelands Improvement.
38. Crude Oil Transportation Systems.

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

1. Joint Committee on Printing.
Chap.
3. Government Printing Office.
5. Production and Procurement of Printing and Binding.
7. Congressional Printing and Binding.
9. Congressional Record.
11. Executive and Judiciary Printing and Binding.
13. Particular Reports and Documents.
15. Federal Register and Code of Federal Regulations.
17. Distribution and Sale of Public Documents.
19. Depository Library Program.
21. Archival Administration.
22. Presidential Records.
23. National Archives Trust Fund Board.
25. National Historical Publications and Records Commission.
27. [Repealed].
29. Records Management by Administrator of General Services.
31. Records Management by Federal Agencies.
33. Disposal of Records.
35. Coordination of Federal Reporting Services.
37. Advertisements by Government Agencies.

TITLE 45—RAILROADS

1. Safety Appliances and Equipment on Railroad Engines and Cars, and Protection of Employees and Travelers.
2. Liability for Injuries to Employees.
3. Hours of Service of Employees.
4. Care of Animals in Transit.
5. Government-Aided Railroads.
6. Mediation, Conciliation, and Arbitration in Controversies Between Carriers and Employees [Repealed or Omitted].
7. Adjustment Boards and Labor Boards [Repealed].
8. Railway Labor.
9. Retirement of Railroad Employees.
10. Tax on Carriers and Employees [Repealed or Omitted].
11. Railroad Unemployment Insurance.
12. Temporary Railroad Unemployment Insurance Program.
13. Railroad Safety.
14. Rail Passenger Service.
15. Emergency Rail Services.
16. Regional Rail Reorganization.
17. Railroad Revitalization and Regulatory Reform.
18. Milwaukee Railroad Restructuring.

TITLE 46—SHIPPING

1. Administration of Shipping Laws.
2. Registry and Recording.
2A. Load Lines for American Vessels.
3. Clearance and Entry.

TITLE 46—SHIPPING—Continued

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4. Tonnage Duties.
5. Discriminating Duties and Reciprocal Privileges.
6. Regulation as to Vessels Carrying Steerage Passengers.
7. Carriage of Explosives or Dangerous Substances.
8. Limitation of Vessel Owner's Liability.
9. Log Books.
10. Regulation of Pilots and Pilotage.
10A. Regulation of Great Lakes Pilots and Pilotage.
11. Officers and Crews of Vessels.
12. Regulation of Vessels in Domestic Commerce.
13. Passports and Papers of Vessels Engaged in Foreign Commerce.
14. Inspection of Steam Vessels.
15. Transportation of Passengers and Merchandise by Steam Vessels.
16. Regulation of Motor Boats.
17. Regulation of Fishing Voyages.
18. Merchant Seamen.
19. Wrecks and Salvage.
19A. Admiralty and Maritime Jurisdiction.
20. Suits in Admiralty by or Against Vessels or Cargoes of United States.
21. Death on the High Seas by Wrongful Act.
22. Suits in Admiralty Against United States for Damages Caused by Public Vessels or for Towage or Salvage Services.
23. Shipping Act.
23A. Intercoastal Shipping.
24. Merchant Marine Act, 1920.
24A. Merchant Marine Act, 1928.
25. Ship Mortgages.
26. Home Port of Vessels.
27. Merchant Marine Act, 1936.
28. Carriage of Goods by Sea.
29. Nautical Instruction.
30. Peonage and Slave Trade Punished by Seizures and Forfeitures.
31. Maritime Academy Program.
32. Construction Assistance for Fishing Vessels.
33. Coordinated National Boating Safety Program.
34. Safe Containers for International Cargo.

TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

1. Telegraphs.
2. Submarine Cables.
3. Radiotelegraphs [Repealed].
4. Radio Act of 1927 [Repealed or Omitted].
5. Wire or Radio Communication.
6. Communications Satellite System.
7. Campaign Communications [Repealed].

TITLE 48—TERRITORIES AND INSULAR POSSESSIONS

Chap.

1. The Bureau of Insular Affairs [Omitted or Repealed].
2. Alaska [Omitted, Transferred, or Repealed].
3. Hawaii [Omitted or Repealed].
4. Puerto Rico.
5. The Philippine Islands [Omitted or Repealed].
6. Canal Zone [Omitted, Transferred, or Repealed].
7. The Virgin Islands.
8. Guano Islands.
8A. Guam.
9. Samoa, Tutuila, Manua, Swains Island, and Trust Territory of the Pacific Islands [Transferred].
10. Territorial Provisions of a General Nature.
11. Alien Owners of Land.
12. The Virgin Islands.
13. Eastern Samoa.
14. Trust Territory of the Pacific Islands.
15. Conveyance of Submerged Lands to Territories.
16. Delegates to Congress from Guam and Virgin Islands.

TITLE 49—TRANSPORTATION

1. Interstate Commerce Act, Part I; General Provisions and Railroad and Pipe Line Carriers.
2. Legislation Supplementary to "Interstate Commerce Act."
3. Termination of Federal Control [Omitted].
4. Bills of Lading.
5. Inland Waterways Transportation.
6. Air Commerce.
7. Coordination of Interstate Railroad Transportation [Omitted or Repealed].
8. Interstate Commerce Act, Part II; Motor Carriers.
9. Civil Aeronautics [Transferred, Omitted, or Repealed].
10. Training of Civil Aircraft Pilots [Omitted or Repealed].
11. Seizure and Forfeiture of Carriers Transporting, etc., Contraband Articles.
12. Interstate Commerce Act, Part III; Water Carriers.
13. Interstate Commerce Act, Part IV; Freight Forwarders.
14. Federal Aid for Public Airport Development.
15. International Aviation Facilities.
16. Development of Commercial Aircraft [Omitted].
17. Medals of Honor for Acts of Heroism.
18. Airways Modernization [Repealed].

TITLE 49—TRANSPORTATION—Continued

Chap.
19. Interstate Commerce Act, Part V; Loan Guaranties.
20. Federal Aviation Program.
21. Urban Mass Transportation.
22. High-Speed Ground Transportation.
23. Department of Transportation.
24. Natural Gas Pipeline Safety.
25. Aviation Facilities Expansion and Improvement.
26. Hazardous Materials Transportation Control [Repealed].
27. Hazardous Materials Transportation.
28. National Transportation Safety Board.
29. Hazardous Liquid Pipeline Safety.
101. General Provisions.
103. Interstate Commerce Commission.
105. Jurisdiction.
107. Rates, Tariffs, and Valuations.
109. Licensing.
111. Operations of Carriers.
113. Finance.
115. Federal-State Relations.
117. Enforcement: Investigations, Rights, and Remedies.
119. Civil and Criminal Penalties.

TITLE 50—WAR AND NATIONAL DEFENSE

1. Council of National Defense.
2. Board of Ordnance and Fortification [Repealed].
3. Alien Enemies.
4. Espionage [Transferred or Repealed].
4A. Photographing, Sketching, Mapping, Etc., Defensive Installations [Repealed].
4B. Disclosure of Classified Information [Repealed].
4C. Atomic Weapons and Special Nuclear Materials Information Rewards.
5. Arsenals, Armories, Arms, and War Material Generally.
6. Willful Destruction, Etc., of War or National-Defense Material [Repealed].
7. Interference with Homing Pigeons Owned by United States [Repealed].
8. Explosives; Manufacture, Distribution, Storage, Use, and Possession Regulated [Repealed].
9. Aircraft [Omitted or Repealed].
10. Helium Gas.
11. Acquisition of and Expenditures on Land for National-Defense Purposes.
12. Vessels in Territorial Waters of United States.
13. Insurrection.
14. Wartime Voting by Land and Naval Forces [Omitted or Repealed].
15. National Security.
16. Defense Industrial Reserves.
17. Arming American Vessels [Repealed].
18. Air-Warning Screen.
Chap.
19. Guided Missiles.
20. Wind Tunnels.
21. Abacá Production.
22. Uniform Code of Military Justice.
22A. Representation of Armed Forces Personnel Before Foreign Judicial Tribunals [Repealed].
23. Internal Security.
24. National Defense Facilities [Repealed].
25. Armed Forces Reserve [Omitted or Repealed].
26. Gifts for Defense Purposes.
27. Reserve Officer Personnel Program [Omitted or Repealed].
28. Status of Armed Forces Personnel Appointed to Service Academies [Omitted or Repealed].
29. National Defense Contracts.
30. Federal Absentee Voting Assistance [Transferred].
31. Advisory Commission on Intergovernmental Relations [Transferred].
32. Chemical and Biological Warfare Program.
33. War Powers Resolution.
34. National Emergencies.
35. International Emergency Economic Powers.
36. Foreign Intelligence Surveillance.

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

Proclamations, Executive Orders, Joint Resolutions and Treaties Respecting War, Neutrality and Peace.

Trading With the Enemy Act of 1917.

Soldiers' and Sailors' Civil Relief Act of 1918 [Omitted].

Selective Draft Act of 1917 [Omitted or Repealed].

Selective Training and Service Act of 1940 [Omitted or Repealed].

Office of Selective Service Records.

Service Extension Act of 1941 [Repealed].

Army Reserve and Retired Personnel Service Law of 1940 [Omitted].

Military Selective Service Act.

Soldiers' and Sailors' Civil Relief Act of 1940.

First War Powers Act, 1941 [Omitted or Repealed].

Second War Powers Act, 1942.

Exportation Restrictions on Certain Articles [Omitted or Repealed].

Requisition of Military Equipment, Materials and Supplies [Omitted].

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE—Continued

Territorial Use of Army and Extension of Service Period [Omitted or Repealed].

Civilian Protection From War Hazards [Omitted].

Decorations, etc., for Merchant Marine [Repealed].

Use of Public Lands for War Purposes [Repealed].

Miscellaneous Provisions Affecting Military Establishment [Omitted, Transferred, or Repealed].

Photographing, Mapping or Other Representation of Military or Defense Properties.

Exemption of Certain Articles From Import Duties and Taxes [Omitted or Repealed].

Temporary Appointments, Promotions, etc., of Navy, Marine Corps, and Coast Guard Officers [Omitted or Repealed].

Jurisdiction of Prizes and Prize Proceedings [Repealed].

Certain Allowance Assistance for Civilian and Military Personnel [Omitted or Repealed].

Free Entry of Gifts From Members of Armed Forces [Omitted or Repealed].

Free Postage for Armed Forces Personnel [Omitted].

Emergency Price Control Act of 1942 [Omitted].

Stabilization Act of 1942 [Omitted].

Extension of Sugar Controls [Omitted].

Missing Persons Act [Omitted or Repealed].

Small Business Mobilization Act [Omitted, Transferred, or Repealed].

War and Defense Contract Acts.

National Emergency and War Shipping Acts.

Farm Labor Supply Appropriation Act, 1944 [Omitted].

War Overtime Pay Act of 1943 [Repealed].

Training of Nurses Through Grants to Institutions [Omitted].

Civilian Reemployment of Members of Merchant Marine [Repealed].

War Labor Disputes Act [Omitted].

Voluntary Enlistments in the Regular Military Establishment [Repealed].

Women's Army Corps [Repealed].

United Nations Relief and Rehabilitation Administration [Omitted].

Temporary Appointments of Army Nurse Corps Members, etc., as Officers of Army of the United States.

Disposal of Materials on Public Lands [Omitted].

Surplus Property Act of 1944.

War Mobilization and Reconversion Act of 1944 [Omitted].

Fleet Admiral of the Navy and General of the Army [Repealed].

Disposal of Censored Mail [Omitted].

Disbursing Officers' Additional Functions [Transferred].

General of the Marine Corps [Omitted].

Admiral in the Coast Guard [Omitted].

Exception of Navy or Coast Guard Vessels From Certain Navigation Rules [Transferred].

Sale of Surplus War-Built Vessels.

Rehabilitation of Philippines [Omitted].

Return and Interment of Persons Buried Outside United States [Repealed].

Veterans' Emergency Housing Program [Omitted or Repealed].

Naval Vessels as Atomic Targets [Omitted].

Admission of Alien Fiancées Into United States [Omitted].

Military Assistance to Philippine Republic [Omitted].

Naval Aid to China [Omitted].

Naval Aid to Foreign Nations [Omitted].

Housing and Rent Acts.

Stabilization of Economy and Commodity Prices.

Domestic Rubber-Producing Industry [Omitted].

Disposal of Government-Owned Rubber-Producing Facilities.

Displaced Persons, Refugees and Orphans [Omitted].

American-Japanese Evacuation Claims.

Medical Care for Philippine Veterans [Repealed].

War Claims.

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE—Continued

Micronesian War and Postwar Claims.

Export Controls [Omitted].

Alien Property Damage Claims [Omitted].

Defense Production Act of 1950.

Domestic Minerals Program Extension.

Domestic Tungsten, Asbestos, Fluorspar and Columbium-Tantalum Purchase Programs [Omitted].

Dependents Assistance Act of 1950 [Omitted or Repealed].

Civil Defense.

Emergency Food Aid to India.

Korean Combat Pay [Repealed].

World War II License Agreements.

Emergency Ship Repair Program.

Export Regulation.

TITLE 19—CUSTOMS DUTIES

Chap. Sec.
13. Trade Agreements Act of 1979 [New].. 2501

CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS

Sec.
58a. Fees for services of customs officers [New].

§ 2. Rearrangement and limitation of districts; changing locations

ANNEX A TO TARIFF SCHEDULES OF THE UNITED STATES

Schedule D—Code Classification of United States Customs Districts and Ports

[The italicized port of each district is the headquarters port of that district]

Code No., customs district, and port

• • •

30. SEATTLE, WASHINGTON

• • •

17. Point Roberts
18. Kenmore Air Harbor

• • •

INTERNATIONAL AIRPORTS OF ENTRY

PART 6—AIR COMMERCE REGULATIONS[1]

As amended to April 1, 1979.

Location	*Name*
Akron, Ohio	Akron Municipal Airport
Albany, N.Y	Albany County Airport
Baudette, Minn	Baudette International Airport
Bellingham, Wash	Bellingham International Airport
Brownsville, Tex	Brownsville International Airport
Burlington, Vt	Burlington International Airport
Calexico, Calif	Calexico International Airport
Caribou, Maine	Caribou Municipal Airport
Chicago, Ill	Midway Airport
Cleveland, Ohio	Cleveland Hopkins International Airport
Cut Bank, Mont	Cut Bank Airport
Del Rio, Tex	Del Rio International Airport
Detroit, Mich	Detroit City Airport
Do	Detroit Metropolitan Wayne County Airport
Douglas, Ariz	Bisbee-Douglas International Airport
Duluth, Minn	Duluth International Airport
Do	Sky Harbor Airport
Eagle Pass, Tex	Eagle Pass Municipal Airport
El Paso, Tex	El Paso International Airport
Fort Lauderdale, Fla	Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash	Friday Harbor Seaplane Base
Grand Forks, N. Dak	Grand Forks International Airport
Great Falls, Mont	Great Falls International Airport
Havre, Mont	Havre City-County Airport
Houlton, Maine	Houlton International Airport
International Falls, Minn	Falls International Airport
Juneau, Alaska	Juneau Municipal Airport
Do	Juneau Harbor Seaplane Base
Ketchikan, Alaska	Ketchikan Harbor Seaplane Base
Key West, Fla	Key West International Airport
Laredo, Tex	Laredo International Airport
Massena, N.Y	Richards Field
McAllen, Tex	Miller International Airport
Miami, Fla	Chalk Seaplane Base
Do	Miami International Airport
Minot, N. Dak	Minot International Airport
Nogales, Ariz	Nogales International Airport
Ogdensburg, N.Y	Ogdensburg Harbor
Do	Ogdensburg International Airport
Oroville, Wash	Dorothy Scott Airport
Do	Dorothy Scott Seaplane Base
Pembina, N. Dak	Pembina Municipal Airport
Portal, N. Dak	Portal Municipal Airport
Port Huron, Mich	St. Clair County International Airport
Port Townsend, Wash	Jefferson County International Airport
Ranier, Minn	Ranier International Seaplane Base
Rochester, N.Y	Rochester-Monroe County Airport
Rouses Point, N.Y	Rouses Point Seaplane Base
San Diego, Calif	San Diego International Airport (Lindbergh Field)
Sandusky, Ohio	Griffing-Sandusky Airport
Sault Ste. Marie, Mich	Sault Ste. Marie City-County Airport
Seattle, Wash	King County International Airport
Do	Lake Union Air Service (Seaplanes)
Tampa, Fla	Tampa International Airport
Tucson, Ariz	Tucson International Airport
Watertown, N.Y	Watertown New York International Airport
West Palm Beach, Fla	Palm Beach International Airport
Williston, N. Dak	Sloulin Field International Airport
Wrangell, Alaska	Wrangell Seaplane Base
Yuma, Ariz	Yuma International Airport

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[1] Part 6 refers to Code of Federal Regulations, Title 19, Customs Duties, Chap. I, Bureau of Customs. This list of international airports of entry is from section 13 of Part 6.

§ 58. Repealed. Pub. L. 95-410, title II, § 214(a), Oct. 3, 1978, 92 Stat. 904

Section, R.S. § 2654; acts Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434; June 2, 1970, Pub. L. 91-271, title III, § 307, 84 Stat. 292, provided for fees of customs officers for eleven enumerated types of services and is now covered by section 58a of this title.

§ 58a. Fees for services of customs officers

The Secretary may charge such fees as may be necessary to cover the costs of providing services similar to or the same as services furnished by customs officers under the sections repealed by subsection (a).

(Pub. L. 95-410, title II, § 214(b), Oct. 3, 1978, 92 Stat. 904.)

REFERENCES IN TEXT

The sections repealed by subsection (a), referred to in text, means the sections repealed by Pub. L. 95-410, § 214(a), which provided: "Sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58 and 46 U.S.C. 329, 330, and 333) are each repealed."

CHAPTER 1A—FOREIGN TRADE ZONES

§ 81c. Admission of foreign merchandise; treatment; shipment to customs territory; appraisal; reshipment to zone

REFERENCES IN TEXT

The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 5003, 5214.

§ 81i. Cooperation of Board with other agencies

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 3—THE TARIFF AND RELATED PROVISIONS

SUBTITLE III—SPECIAL PROVISIONS

ANTIDUMPING

§§ 160 to 171. Repealed. Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193

Section 160, acts May 27, 1921, ch. 14, § 201, 42 Stat. 11; Sept. 1, 1954, ch. 1213, title III, § 301, 68 Stat. 1138; Aug. 14, 1958, Pub. L. 85-630, §§ 1, 4(b), 72 Stat. 583, 585; Jan. 3, 1975, Pub. L. 93-618, title III, § 321(a), 88 Stat. 2043, related to the initiation of a dumping investigation. See section 1673 et seq. of this title.

Section 161, acts May 27, 1921, ch. 14, § 202, 42 Stat. 11; Sept. 1, 1954, ch. 1213, title III, § 302, 68 Stat. 1139; Aug. 14, 1958, Pub. L. 85-630, §§ 2, 4(b), 72 Stat. 583, 585; June 2, 1970, Pub. L. 91-271, title III, § 311, 84 Stat. 292, related to the collection of a special dumping duty. See section 1673 et seq. of this title.

Section 162, acts May 27, 1921, ch. 14, § 203, 42 Stat. 12; Jan. 3, 1975, Pub. L. 93-618, title III, § 321(b), 88 Stat. 2045, related to the determination of the purchase price of merchandise for purposes of sections 160 to 171 of this title. See section 1673 et seq. of this title.

Section 163, acts May 27, 1921, ch. 14, § 204, 42 Stat. 13; Jan. 3, 1975, Pub. L. 93-618, title III, § 321(c), 88 Stat. 2046, related to the determination of the price at which merchandise is sold or agreed to be sold in the United States. See section 1677a of this title.

Section 164, acts May 27, 1921, ch. 14, § 205, 42 Stat. 13; Aug. 14, 1958, Pub. L. 85-630, § 3, 72 Stat. 584; Jan. 3, 1975, Pub. L. 93-618, title III, § 321(d), 88 Stat. 2046, related to the foreign market value of goods for purposes of sections 160 to 171 of this title. See section 1677b of this title.

Section 165, acts May 27, 1921, ch. 14, § 206, 42 Stat. 213; Aug. 14, 1958, Pub. L. 85-630, § 4(a), 72 Stat. 584, related to the constructed value of merchandise for purposes of sections 160 to 171 of this title. See section 1673 et seq. of this title.

Section 166, act May 27, 1921, ch. 14, § 207, 42 Stat. 14, defined the term "exporter" as used in sections 160 to 171 of this title. See section 1677(13) of this title.

Section 167, acts May 27, 1921, ch. 14, § 208, 42 Stat. 14; June 2, 1970, Pub. L. 91-271, title III, § 312, 84 Stat. 292, related to the oaths and bonds given in the case of imported merchandise. See section 1673 et seq. of this title.

Section 168, acts May 27, 1921, ch. 14, § 209, 42 Stat. 15; Aug. 14, 1958, Pub. L. 85-630, § 4(b), 72 Stat. 585; June 2, 1970, Pub. L. 91-271, title III, § 313, 84 Stat. 292, related to the duties of customs officers with regard to the appraisal of merchandise. See section 1673h of this title.

Section 169, acts May 27, 1921, ch. 14, § 210, 42 Stat. 15; May 28, 1926, ch. 411, § 1, 44 Stat. 669; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; Aug. 14, 1958, Pub. L. 85-630 § 4(b), 72 Stat. 585; June 2, 1970, Pub. L. 91-271, title III, § 314, 84 Stat. 293, related to protests from the determinations of customs officers. See section 1673 et seq. of this title.

Section 170, act May 27, 1921, ch. 14, § 211, 42 Stat. 15, related to the treatment of antidumping duties as regular duties for purposes of all laws relating to the drawback of duties. See section 1673i of this title.

Section 170a, act May 27, 1921, ch. 14, § 212, as added Aug. 14, 1958, Pub. L. 85-630, § 5, 72 Stat. 585, and amended Jan. 3, 1975, Pub. L. 93-618, title III, § 321(e), 88 Stat. 2048, defined terms used in sections 160 to 171 of this title. See section 1677 of this title.

Section 171, act May 27, 1921, ch. 14, § 213, formerly § 212, 42 Stat. 15, renumbered Aug. 14, 1958, Pub. L. 85-630, § 5, 72 Stat. 585, authorized the citation of sections 160 to 171 of this title as the "Antidumping Act, 1921".

EFFECTIVE DATE OF REPEAL

Repeal of sections effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

SAVINGS PROVISIONS

Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193, provided in part that findings in effect on the effective date of the repeal of sections 160 to 171 of this title (Jan. 1, 1980, see Effective Date of Repeal note set out above) or issued pursuant to court order in an action brought before that date, shall remain in effect, subject to review under section 1675 of this title.

§§ 172, 173. Omitted

Section 172, act May 27, 1921, ch. 14, § 406, 42 Stat. 18; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which defined the terms "person" and "United States" as those terms were used in sections 160 to 171 of this title was omitted as obsolete in view of the repeal of sections 160 to 171 of this title by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

Section 173, act May 27, 1921, ch. 14, § 407, 42 Stat. 18, which directed the Secretary to make rules and regulations necessary for the enforcement of sections 160 to 171 of this title, was omitted as obsolete in view of the repeal of sections 160 to 171 of this title by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

§ 197. Duties, how payable

Except as provided in section 198 of this title all duties upon imports shall be collected in ready money, and shall be paid in coin, coin certificates, and such other certificates or Treasury notes as may by law be declared receivable in payment thereof.

(R.S. § 3009; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, 249.)

CODIFICATION

R.S. § 3009 was from acts Mar. 2, 1833, ch. 55, § 3, 4 Stat. 630; Aug. 6, 1846, ch. 84, § 1, 9 Stat. 53; Feb. 25, 1862, ch. 33, § 5, 12 Stat. 346.

R.S. 3473, formerly cited as a credit to this section, was repealed by Pub. L. 95-598, title III, § 322(d), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2679, 2682, effective Oct. 1, 1979.

Prior to its incorporation into the Code, R.S. § 3009, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, read as follows:

"All duties upon imports shall be collected in ready money, and shall be paid in coin or coin certificates or in United States notes, payable on demand, authorized to be issued prior to the twenty-fifth day of February, one thousand eight hundred and sixty-two, and by law receivable in payment of public dues."

Its provisions were changed to conform to section 198 of this title authorizing the receipt of certified checks in payment of duties; section 405 of Title 31, Money and Finance (act Feb. 28, 1878, ch. 20, § 3, 20 Stat. 26) making certain certificates and treasury notes receivable for customs; section 451 of Title 31 (act Dec. 24, 1919, ch. 15, § 1, 41 Stat. 370) making gold certificates a legal tender in payment of all debts and dues, public and private; and a provision of act Mar. 14, 1900, ch. 41, § 6, 31 Stat. 47, as amended (omitted from the Code as superseded by section 451 of Title 31) that gold certificates should be receivable for customs.

SUBTITLE IV—CUSTOMS ADMINISTRATION

PART 4—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 467. Imported distilled spirits, wines, or malt liquors; regulations for marks, brands, and stamps or devices on bulk containers; forfeitures

The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any bulk container (including a pipeline) used for holding, storing, transferring or conveying imported distilled spirits, wines, or malt liquors as he deems necessary and proper in the administration of the Federal laws applicable to such imported distilled spirits, wines, or malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on such containers. Any such container of imported distilled spirits, wines, or malt liquors withdrawn from customs custody purporting to contain imported distilled spirits, wines, or malt liquors found without having thereon any mark, brand, stamp, or device the Secretary of the Treasury may require, shall be with its contents, forfeited to the United States of America.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 201, 92 Stat. 898.)

AMENDMENTS

1978—Pub. L. 95-410 substituted provisions authorizing the Secretary of the Treasury to require by regulation the placing of marks, brands, and stamps or devices on bulk containers of imported distilled spirits, wines, or malt liquors used for holding, storing, transferring or conveying the imported liquors for prior provisions for deposit of imported distilled spirits, wines, and malt liquors in public store or bonded warehouse, inspection of packages, affixing of stamps thereto, and special stamps for cask or package of not less than five wine-gallons filled for shipment, sale, or delivery on premises of any wholesale liquor-dealer under rules and regulations prescribed by Commissioner of Internal Revenue.

CHAPTER 4—TARIFF ACT OF 1930

SUBTITLE III—ADMINISTRATIVE PROVISIONS

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

Sec.
1496a. Clearance restrictions of individuals returning from abroad; special circumstances; "baggage and effects" defined [New].
1504. Limitation on liquidation [New].
  (a) Liquidation.
  (b) Extension.
  (c) Notice of suspension.
  (d) Limitation.
1508. Recordkeeping [New].
  (a) Requirements.
  (b) Period of time.
  (c) Limitation.
1516a. Judicial review in countervailing duty and antidumping duty proceedings [New].
  (a) Review of determination.
  (b) Standards of review.
  (c) Liquidation of entries.
  (d) Standing.
  (e) Liquidation in accordance with final decision.
  (f) Definitions.

PART V—ENFORCEMENT PROVISIONS

1625. Publication of decisions [New].

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES [NEW]

PART I—IMPOSITION OF COUNTERVAILING DUTIES

1671. Countervailing duties imposed.
  (a) General rule.
  (b) Country under the Agreement.
  (c) Cross reference.
1671a. Procedures for initiating a countervailing duty investigation.
  (a) Initiation by administering authority.
  (b) Initiation by petition.
  (c) Petition determination.
  (d) Notification to Commission of determination.
1671b. Preliminary determinations.
  (a) Determination by Commission of reasonable indication of injury.
  (b) Preliminary determination by administering authority.
  (c) Extension of period in extraordinarily complicated cases.
  (d) Effect of determination by the administering authority.
  (e) Critical circumstances determinations.
  (f) Notice of determinations.
1671c. Termination or suspension of investigation.
  (a) Termination of investigation on withdrawal of petition.

Sec.
- (b) Agreements to eliminate or offset completely a subsidy or to cease exports of subsidized merchandise.
- (c) Agreements eliminating injurious effect.
- (d) Additional rules and conditions.
- (e) Suspension of investigation procedure.
- (f) Effects of suspension of investigation.
- (g) Investigation to be continued upon request.
- (h) Review of suspension.
- (i) Violation of agreement.
- (j) Determination not to take agreement into account.

- 1671d. Final determinations.
  - (a) Final determination by administering authority.
  - (b) Final determination by Commission.
  - (c) Effect of final determinations.
  - (d) Publication of notice of determinations.
- 1671e. Assessment of duty.
  - (a) Publication of countervailing duty order.
  - (b) Imposition of duties.
- 1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders.
  - (a) Deposit of estimated countervailing duty under section 1671b(d)(2) of this title.
  - (b) Deposit of estimated countervailing duty under section 1671e(a)(3) of this title.

PART II—IMPOSITION OF ANTIDUMPING DUTIES

- 1673. Imposition of antidumping duties.
- 1673a. Procedures for initiating an antidumping duty investigation.
  - (a) Initiation by administering authority.
  - (b) Initiation by petition.
  - (c) Petition determination.
  - (d) Notification to Commission of determination.
- 1673b. Preliminary determinations.
  - (a) Determination by Commission of reasonable indication of injury.
  - (b) Preliminary determination by administering authority.
  - (c) Extension of period in extraordinarily complicated cases.
  - (d) Effect of determination by the administering authority.
  - (e) Critical circumstances determinations.
  - (f) Notice of determinations.
- 1673c. Termination of suspension of investigation.
  - (a) Termination of investigation on withdrawal of petition.
  - (b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise.
  - (c) Agreements eliminating injurious effect.
  - (d) Additional rules and conditions.
  - (e) Suspension of investigation procedure.
  - (f) Effects of suspension of investigation.
  - (g) Investigation to be continued upon request.
  - (h) Review of suspension.
  - (i) Violation of agreement.
  - (j) Determination not to take agreement into account.

Sec.
- 1673d. Final determinations.
  - (a) Final determination by administering authority.
  - (b) Final determination by Commission.
  - (c) Effect of final determinations.
  - (d) Publication or notice of determinations.
- 1673e. Assessment of duty.
  - (a) Publication of antidumping duty order.
  - (b) Imposition of duty.
  - (c) Security in lieu of estimated duty pending early determination of duty.
- 1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order.
  - (a) Deposit of estimated antidumping duty under section 1673b(d)(2) of this title.
  - (b) Deposit of estimated antidumping duty under section 1673e(a)(3) of this title.
- 1673g. Conditional payment of antidumping duty.
  - (a) General rule.
  - (b) Importer requirements.
- 1673h. Duties of customs officers.
- 1673i. Antidumping duty treated as regular duty for drawback purposes.

PART III—REVIEW OF DETERMINATIONS

- 1675. Administrative review of determinations.
  - (a) Periodic review of amount of duty.
  - (b) Reviews upon information or request.
  - (c) Revocation of countervailing duty order or antidumping duty order.
  - (d) Hearings.
  - (e) Determination that basis for suspension no longer exists.

PART IV—GENERAL PROVISIONS

- 1677. Definitions; special rules.
- 1677a. United States price.
  - (a) United States price.
  - (b) Purchase price.
  - (c) Exporter's sales price.
  - (d) Adjustments to purchase price and exporter's sales price.
  - (e) Additional adjustments to exporter's sales price.
- 1677b. Foreign market value.
  - (a) Determination; fictitious market; sales agencies.
  - (b) Sales at less than cost of production.
  - (c) State-controlled economies.
  - (d) Special rule for certain multinational corporations.
  - (e) Constructed value.
  - (f) Authority to use sampling techniques and to disregard insignificant adjustments.
- 1677c. Hearings.
  - (a) Investigation hearings.
  - (b) Procedures.
- 1677d. Subsidy practices discovered during an investigation.
- 1677e. Verification of information.
  - (a) General rule.
  - (b) Determinations to be made on best information available.
- 1677f. Access to information.
  - (a) Information generally made available.
  - (b) Confidential information.
  - (c) Limited disclosure of certain confidential information under protective order.

Sec.
1677g. Interest on certain overpayments and underpayments.
  (a) General rule.
  (b) Rate.

SUBTITLE I—TARIFF SCHEDULES OF THE UNITED STATES

§ 1202. Revised Tariff Schedules

PUBLICATION OF TARIFF SCHEDULES

Commencing with Supplement III (1979) to the 1976 edition of the United States Code, the Tariff Schedules of the United States will not be published in the Code because numerous amendments thereof would require reprinting the entire Tariff Schedules each year. A current version of the Tariff Schedules is maintained and published periodically by the United States International Trade Commission under section 201 of the Tariff Classification Act of 1962 (Pub. L. 87-456) and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

SUBTITLE II—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

§ 1301. Repealed. Apr. 30, 1946, ch. 244, title V, § 511(1), 60 Stat. 158

Section, act June 17, 1930, ch. 497, title III, § 301, 46 Stat. 685, related to duties and taxes on Philippine articles coming to the United States and United States articles imported into the Philippine Islands. Subject matter is now covered by Philippine Trade Act of 1946 (see Short Title note set out under section 1354 of Title 22, Foreign Relations and Intercourse).

EFFECTIVE DATE OF REPEAL

Section repealed effective May 1, 1946, see section 512 of act Apr. 30, 1946, set out as an Effective Date note under section 1354 of Title 22, Foreign Relations and Intercourse.

§ 1303. Countervailing duties

(a) Levy of countervailing duties

(1) Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 1671(b) of this title), whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under subtitle IV of this chapter; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

(3) to (6) Repealed. Pub. L. 96-39, title I, § 103(b)(1), July 26, 1979, 93 Stat. 190

(b) Regulations prescribed by administering authority; imported articles or merchandise which are not duty free

The duty imposed under subsection (a) of this section shall be imposed, under regulations prescribed by the administering authority (as defined in section 1677(1) of this title), in accordance with subtitle IV of this chapter (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 1671b(a), 1671c, or 1671d(b) of this title shall be required,

(2) an investigation may not be suspended under section 1671c(c) of this title,

(3) no determination as to the presence of critical circumstances shall be made under section 1671b(e) or 1671d(a)(2) or (b)(4)(A) of this title, and

(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 1671c(c) of this title which are not permitted or required by this subsection shall be disregarded.

(c) Repealed. Pub. L. 96-39, title I, § 103(b)(2), July 26, 1979, 93 Stat. 190

(d) Temporary provision while negotiations are in progress

[*See main edition for text of* (*1*) *to* (*3*)]

(4)(A) The four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 2191 of this title, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(ii) The date of the enactment of such implementing legislation.

(iii) September 30, 1979.

(B) Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if subtitle IV of this chapter were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 1671(b) of this title), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:

(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

(ii) The date such determination is revoked under paragraph (3).

(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2) of this section.

[*See main edition for text of* (*e*)]

(f) Cross reference

For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 1671(b) of this title, see subtitle IV of this chapter.

(As amended Apr. 3, 1979, Pub. L. 96-6, § 1, 93 Stat. 10; July 26, 1979, Pub. L. 96-39, title I, §§ 103, 105(a), 93 Stat. 190, 193.)

REFERENCES IN TEXT

The day before the date of the enactment of the Trade Agreement Act of 1979, referred to in subsec. (d)(4)(B), means the date before the date of enactment of Pub. L. 96-39, July 26, 1979, 93 Stat. 144, which was approved on July 26, 1979.

Section 104 of the Trade Agreements Act of 1979, referred to in subsec. (d)(4)(B)(i), is section 104 of Pub. L. 96-39, title I, July 26, 1979, 93 Stat. 190, which is set out as a note under section 1671 of this title.

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-39, § 103(a), substituted "Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 1671(b) of this title), whenever" for "Whenever".

Subsec. (a)(2). Pub. L. 96-39, § 103(c), substituted "are affirmative determinations by the Commission under subtitle IV of this chapter" for "is an affirmative determination by the Commission under subsection (b)(1) of this section".

Subsec. (a)(3) to (6). Pub. L. 96-39, § 103(b)(1), struck out pars. (3) to (6) which related to imported articles or merchandise as to which the Secretary of the Treasury had not determined whether or not any bounty or grant was being paid or bestowed, the determination of the question of bounty or grant, and the Secretary's authority to promulgate necessary regulations for the identification of articles and merchandise subject to duties under this section and for the assessment and collection of those duties.

Subsec. (b). Pub. L. 96-39, § 103(b)(2), substituted provisions relating to the imposition of countervailing duties, the regulations relating to the imposition of those duties, and exceptions in the case of imported articles or merchandise which are not free of duty for provisions relating to the determination of injury with respect to duty-free merchandise and the suspension of liquidation.

Subsec. (c). Pub. L. 96-39, § 103(b)(2), struck out subsec. (c) relating to the applicability of an affirmative final determination by the Secretary with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the determination in the Federal Register.

Subsec. (d)(4). Pub. L. 96-6 added par. (4).

Subsec. (d)(4)(B). Pub. L. 96-39, § 105(a), substituted "Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if subtitle IV of this chapter were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 1671(b) of this title), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until" for "Any determination made under this subsection by the Secretary that was in effect on January 2, 1979, shall remain in effect, until" in the provisions preceding cl. (i) and, in cl. (i), substituted "The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979" for "The date to which the four-year period is extended under subparagraph (A), notwithstanding any provision to the contrary in any such determination".

Subsec. (f). Pub. L. 96-39, § 103(b)(3), added subsec. (f).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsecs. (a) and (b) of this section, repeal of subsec. (c) of this section, and enactment of subsec. (f) of this section by section 103 of Pub. L. 96-39, effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

Section 2 of Pub. L. 96-6 provided that: "The amendment made by the first section of this Act [adding subsec. (d)(4) of this section] shall take effect January 3, 1979."

Section 105(b) of Pub. L. 96-39 provided that: "The amendment made by subsection (a) [amending subsec. (d)(4)(B) of this section] shall take effect on the date of enactment of this Act [July 26, 1979]."

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury under this section were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, except that the Customs Service of the Department of the Treasury accept such deposits, bonds, or other security as deemed appropriate by the Secretary of Commerce, assess and collect such duties as directed by the Secretary of Commerce, and furnish such of its important records or copies thereof as requested by the Secretary of Commerce incident to the functions transferred.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1337, 1514, 1516a, 1671, 1675, 1677, 1677a, 2192, 2194 of this title; title 28 section 2632.

§ 1311. Bonded manufacturing warehouses

[*See main edition for text of undesignated pars. 1 to 9*]

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses.

(As amended July 26, 1979, Pub. L. 96-39, title VIII, § 856(b), 93 Stat. 295.)

Amendments

1979—Pub. L. 96-39, in paragraph beginning "Distilled spirits and", struck out provision that no internal revenue tax be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses be subject by reason of such rectification to the payment of special tax as rectifier.

Effective Date of 1979 Amendment

Section 856(b) of Pub. L. 96-39 provided that: "Effective January 1, 1980, the second proviso to the last paragraph of section 311 of the Tariff Act of 1930 [this section] is hereby repealed."

Withdrawal of Distilled Spirits to Manufacturing Bonded Warehouses; Transfers to Warehouses Pending Exportation

Pub. L. 96-39, title VIII, § 856(a), July 26, 1979, 93 Stat. 295, provided that: "In the case of articles described in section 5522(a) of the Internal Revenue Code of 1954 [section 5522(a) of Title 26, Internal Revenue Code] (as in effect before its repeal by section 807(a)(50) of the Distilled Spirits Tax Revision Act of 1979 [section 807(50) of Pub. L. 96-39]) the first sentence of the eighth paragraph of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) shall be applied as if such first sentence did not include the phrase 'at an exterior port'."

Section Referred to in Other Sections

This section is referred to in section 1352 of this title; title 18 section 2341; title 26 section 5214.

§ 1312. Bonded smelting and refining warehouses

References in Text

The Tariff Schedules of the United States, referred to in subsec. (f), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 1313. Drawbacks and refunds

Section Referred to in Other Sections

This section is referred to in title 7 section 1121.

§ 1315. Effective date of rates of duty

(a) Articles entered or withdrawn from warehouse for consumption

Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this chapter or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury, except that—

(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed;

(2) any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 1552 of this title, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 1490 of this title, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation; and

(3) any article for which duties may, under section 1505 of this title, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Effective date of administrative rulings resulting in higher rates

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties, or the imposition of countervailing duties under section 1303 of this title.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 101, title II, § 204, 92 Stat. 888, 900; July 26, 1979, Pub. L. 96-39, title XI, § 1106(e), 93 Stat. 312.)

References in Text

The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Codification

Section 331(c) of Pub. L. 93-618, which amended subsec. (d) of this section in 1975 and which is set out in the credit of this section, was itself amended by Pub. L. 96-39, title XI, § 1106(e), July 26, 1979, 93 Stat. 312, to correct a typographical error in the directory language of section 331(c) of Pub. L. 93-618 by substituting "315(d)" for "515(d)" as the number of the section of the Tariff Act of 1930 being amended by section 331(c) of Pub. L. 93-618. Since the amendment involved directory language only and had already been executed to this section as the probable intent of Congress, the amendment by Pub. L. 96-39 involved no change in the text of this section.

Amendments

1978—Subsec. (a)(3). Pub. L. 95-410, § 101, added par. (3).

Subsec. (d). Pub. L. 95-410, § 204, substituted "publication in the Federal Register" for "publication in the weekly Treasury Decisions".

§ 1318. Emergencies

Transfer of Functions

All functions of the Secretary of the Treasury under this section with respect to the functions transferred to the Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg.

Plan No. 3 of 1979 were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(E), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, to be exercised in consultation with the Secretary of the Treasury.

§ 1321. Administrative exemptions

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of less than $10 between the total estimated duties and taxes deposited, or the total duties and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties and taxes actually accruing thereon; and

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed—

(A) $25 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ($40 in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or

(B) $25 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under item 812.25 or 813.31 of section 1202 of this title, or

(C) $5 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

[*See main edition for text of* (*b*)]

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 205, 92 Stat. 900.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-410, § 205(a), substituted "$10" for "$3" and "duties and taxes" for "duties or taxes" in three instances.

Subsec. (a)(2). Pub. L. 95-410, § 205(b) (1)-(3), substituted in: subpar. (A), "$25" and "$40" for "$10" and "$20"; subpar. (B), "$25" for "$10"; and subpar. (C), "$5" for "$1".

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 1330. Organization of Commission

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Chairman and vice chairman; quorum

(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term—

(i) either of the two commissioners most recently appointed to the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or

(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the limitation set forth in subparagraph (A)(i).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

[*See main edition for text of* (*d*)]

(e) Authorization of appropriations

(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2) There are authorized to be appropriated to the Commission for necessary expenses for fiscal year 1979 an amount not to exceed $12,963,000.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for

increases authorized by law in salary, pay, retirement, and other employee benefits.

(As amended Aug. 17, 1977, Pub. L. 95-106, §§ 1, 2(a), 91 Stat. 867; Oct. 10, 1978, Pub. L. 95-430, 92 Stat. 1020.)

AMENDMENTS

1978—Subsec. (e)(2). Pub. L. 95-430 substituted provisions authorizing $12,963,000 to be appropriated for the necessary expenses of the Commission for fiscal year 1979 for provisions authorizing $11,522,000 to be appropriated for similar expenses for fiscal year 1978.

1977—Subsec. (c). Pub. L. 95-106, § 2(a), added provisions in par. (1) for the Congressional notification of Presidential designations, substituted, in par. (2), provisions covering the expiration of terms of office after June 16, 1978, for provisions covering the expiration of terms of office on and after June 17, 1975, added par. (3), and redesignated as pars. (4) to (6) provisions formerly contained in par. (1).

Subsec. (e). Pub. L. 95-106, § 1, designated existing provisions as par. (1) and added pars. (2) and (3).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(b) of Pub. L. 95-106 provided that: "The amendment made by this section [amending subsec. (c) of this section] shall apply with respect to the designation of chairmen and vice chairmen of the United States International Trade Commission for terms beginning after June 16, 1978."

§ 1331. General powers

(a) Administration

(1) Except as provided in paragraph (2), the chairman of the Commission shall—

(A) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(B) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

(C) exercise and be responsible for all other administrative functions of the Commission.

Any decision by the chairman under this paragraph shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS-15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) Application of civil service law

Except for employees excepted under civil service rules, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.

(c) Expenses

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) Principal office at Washington

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) Office at New York

The commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) Official seal

The commission is authorized to adopt an official seal, which shall be judicially noticed.

[(g) Redesignated (f)]

(As amended Aug. 17, 1977, Pub. L. 95-106, § 3(a), (b), 91 Stat. 868; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-106, § 3(a), designated existing provisions as par. (1), and in par. (1) as so designated, substituted provisions authorizing the chairman to perform certain required functions subject to approval by the Commission for provisions authorizing the Commission to perform certain required functions and added provisions requiring the chairman to exercise and be responsible for all other administrative functions of the Commission and added pars. (2) and (3).

Subsec. (c). Pub. L. 95-106, § 3(b)(1), substituted "approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner)" for "approved by the Commission".

Subsec. (d). Pub. L. 95-106, § 3(b)(2), redesignated former subsec. (e) as (d). Former subsec. (d), relating to offices and supplies, was struck out.

Subsec. (e). Pub. L. 95-106, § 3(b)(2), redesignated former subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 95-106, § 3(b)(2), redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 95-106, § 3(b)(2), redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3(c) of Pub. L. 95-106 provided that: "The amendments made by this section [amending subsecs. (a), (c), and (d) to (g) of this section] take effect on the date of enactment of this Act [Aug. 17, 1977]."

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1332. Investigations

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Definitions

When used in this subdivision and in subdivision (d) of this section—

[*See main edition for text of* (*1*)]

(2) The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 1401a(b) of this title plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended July 26, 1979, Pub. L. 96-39, title II, § 202(a)(1), 93 Stat. 201.)

REFERENCES IN TEXT

The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

AMENDMENTS

1979—Subsec. (e)(2). Pub. L. 96-39 substituted "the transaction value of the imported merchandise determined in accordance with section 1401a(b) of this title plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States" for "the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1981, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation, see section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

CONTINUATION OF REPORTS WITH RESPECT TO SYNTHETIC ORGANIC CHEMICALS

Pub. L. 95-106, § 5, Aug. 17, 1977, 91 Stat. 869, provided that: "The International Trade Commission is hereby directed to make, for each calendar year ending before January 1, 1981, reports with respect to synthetic organic chemicals similar in scope to the reports made with respect to such chemicals for the calendar year 1976."

§ 1332a. Importation of red cedar shingles

REFERENCES IN TEXT

The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 1336. Equalization of costs of production

[*See main edition for text of* (*a*)]

(b) Repealed. Pub. L. 96-39, title II, § 202(a)(2)(A), July 26, 1979, 93 Stat. 202

(c) Proclamation by the President

The President shall by proclamation approve the rates of duty and changes in classification specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) Effective date of rates and changes

Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification specified in the report of the commission shall take effect.

[*See main edition for text of* (*e*)]

(f) Modification of changes in duty

Any increased or decreased rate of duty or change in classification which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

[*See main edition for text of* (*g*) *to* (*i*)]

(j) Repealed. Pub. L. 96-39, title II, § 202(a)(2)(D), July 26, 1979, 93 Stat. 202

(k) Investigations prior to June 17, 1930

All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154 to 159 of this title, including investigations in which the President has not proclaimed changes in classification or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

(As amended July 26, 1979, Pub. L. 96-39, title II, § 202(a)(2), 93 Stat. 202.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-39, § 202(a)(2)(A), struck out subsec. (b) which related to the setting of ad valorem rates based upon the American selling price of domestic articles as would be necessary to equalize differences in the costs of production.

Subsec. (c). Pub. L. 96-39, § 202(a)(2)(B), substituted "changes in classification specified in any report" for "changes in classification and in basis of value specified in any report".

Subsec. (d). Pub. L. 96-39, § 202(a)(2)(C), substituted "changes in classification specified in the report" for "changes in classification or in basis of value specified in the report".

Subsec. (f). Pub. L. 96-39, § 202(a)(2)(C), substituted "change in classification which has taken effect" for "change in classification or in basis of value which has taken effect".

Subsec. (j). Pub. L. 96-39, § 202(a)(2)(D), struck out subsec. (j) which had authorized the Secretary of the Treasury to make necessary rules and regulations for the entry and declaration of foreign articles with respect to which a change in the basis of value had been made.

Subsec. (k). Pub. L. 96-39, § 202(a)(2)(C), substituted "changes in classification or increases or decreases" for "changes in classification or in basis of value or increases or decreases".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1981, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation, see section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

§ 1337. Unfair practices in import trade

[*See main edition for text of* (a)]

(b) Investigation of violations by Commission; time limits

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of section 1303 of this title or of part II of subtitle IV of this chapter, it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such part II. If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 1303, 1671, or 1673 of this title, it shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 1303, 1671, or 1673 of this title, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 1677(1) of this title) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 1303 of this title or by the administering authority under section 1671 or 1673 of this title with respect to the matter within such section 1303, 1671, or 1673 of this title of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) Determinations; review

The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of this section may appeal such determination to the United States Court of Customs and Patent Appeals. Such court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Cease and desist orders; civil penalty for violation of orders

(1) In lieu of taking action under subsection (d) or (e) of this section, the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e) of this section, as the case may be.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $10,000 or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

[*See main edition for text of* (*g*) *to* (*j*)]

(As amended July 26, 1979, Pub. L. 96-39, title I, § 106(b)(1), title XI, § 1105, 93 Stat. 193, 310.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (j), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Codification

In subsec. (b)(3), "such part" was substituted for "such Act", meaning the Antidumping Act, 1921, to reflect the probable intent of Congress. See 1979 Amendment note below regarding subsec. (b)(3).

Amendments

1979—Subsec. (b)(3). Pub. L. 96-39, §§ 106(b)(1), 1105(a), substituted "that a matter, in whole or in part, may come" for "that the matter may come", substituted "part II of subtitle IV of this chapter" for "the Antidumping Act, 1921", and added provisions relating to matters based solely or in part on alleged acts and effects within the purview of sections 1303, 1671, or 1673 of this title.

Subsec. (c). Pub. L. 96-39, § 1105(c), substituted "Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of this section" for "Any person adversely affected by a final determination of the Commission under subsection (d) or (e) of this section".

Subsec. (f). Pub. L. 96-39, § 1105(b), designated existing provisions as par. (1) and added par. (2).

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1979 Amendment

Amendment of subsec. (b)(3) of this section by section 106(b)(1) of Pub. L. 96-39, which substituted "part II of subtitle IV of this chapter" for "the Antidumping Act, 1921" effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

Amendment of subsec. (b)(3) of this section by section 1105(a) of Pub. L. 96-39, which inserted provisions relating to matters based solely or in part on alleged acts and effects within the purview of sections 1303, 1671, and 1673 of this title, and amendment of subsecs. (c) and (f) of this section by section 1105(b) and (c) of Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Part III—Promotion of Foreign Trade

§ 1351. Foreign trade agreements

(a) Authority of President; modification and decrease of duties; altering import restrictions

[*See main edition for text of* (*1*)]

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 1401a of this title (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

[*See main edition for text of* (*E*), (*3*) *to* (*6*); (*b*) *to* (*f*)]

(As amended July 26, 1979, Pub. L. 96-39, title II, § 202(a)(3), 93 Stat. 202.)

Amendments

1979—Subsec. (a)(2)(D)(ii). Pub. L. 96-39 struck out reference to standards of valuation contained in section 1402 of this title.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective Jan. 1, 1981, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation, see section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

§ 1352. Equalization of costs of production

(a) Application to importation of articles under foreign-trade agreement

The provisions of section 1336 of this title shall not apply to any article with respect to the importation of which into the United States a foreign-trade agreement has been concluded pursuant to this part or the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.] or the Trade Act of 1974 [19 U.S.C. 2101 et seq.] or to any provision of any such agreement. The third paragraph of section 1311 of this title shall apply to any agreement concluded pursuant to this part or the Trade Expansion Act of 1962 or the Trade Act of 1974 to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended July 26, 1979, Pub. L. 96-39, title XI, § 1106(h)(2), 93 Stat. 313.)

CODIFICATION

Section 602(a) of Pub. L. 93-618, which amended subsec. (a) of this section and which is set out in the credit of this section, was itself amended by Pub. L. 96-39, title XI, § 1106(h)(2), July 26, 1979, 93 Stat. 313, to correct an error in the directory language of section 602(a) of Pub. L. 93-618. Since the correction of the error involved only directory language, the correction did not result in any change in the text of this section. However, subsec. (a) of this section is set out in this Supplement to correct a typographical error appearing in the main edition.

SUBTITLE III—ADMINISTRATIVE PROVISIONS

PART I—DEFINITIONS

§ 1401a. Value

(a) Generally

(1) Except as otherwise specifically provided for in this chapter, imported merchandise shall be appraised, for the purposes of this chapter, on the basis of the following:

(A) The transaction value provided for under subsection (b) of this section.

(B) The transaction value of identical merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2) of this section.

(C) The transaction value of similar merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d) of this section, if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e) of this section, if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f) of this section, if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) Transaction value of imported merchandise

(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this chapter only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;

(ii) the deductive value or computed value for identical merchandise or similar merchandise; or

(iii) the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced;

but only if each value referred to in clause (i), (ii) or (iii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise. No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction value of identical merchandise and similar merchandise

(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this chapter under subsection (b) of this section but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) Deductive value

(1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) the price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) Computed value

(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) Value if other values cannot be determined or used

(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this chapter, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under subtitle IV of this chapter.

(g) Special rules

(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) Definitions

As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term "identical merchandise" means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term "packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term "similar merchandise" means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information", when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) of this section to the price actually paid or payable,

(ii) deducted under subsection (d)(3) of this section as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) of this section as profit or general expense;

(B) any difference taken into account for purposes of subsection (b)(2)(C) of this section; or

(C) any adjustment made under subsection (c)(2) of this section;

means information that establishes the accuracy of such amount, difference, or adjustment.

(As amended July 26, 1979, Pub. L. 96-39, title II, § 201(a), 93 Stat. 194.)

AMENDMENTS

1979—Pub. L. 96-39 completely revised the statutory standards for appraising the value of imported merchandise to conform to the Customs Valuation Agreement, incorporating, as part of that revision, a new format of five methods of determining customs value in subsecs. (b) through (f), a group of special rules in subsec. (g), and the definition of terms in subsec. (h).

EFFECTIVE DATE OF 1979 AMENDMENT; TRANSITION TO NEW VALUATION STANDARDS

Section 204 of Pub. L. 96-39 provided that:

"(a) EFFECTIVE DATE OF AMENDMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title [amending the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title), and sections 1332, 1336, 1351, 1401a, 1500, and 2481 of this title and section 993 of Title 26, Internal Revenue Code, repealing section 1402 of this title, and enacting provisions set out as notes under sections 1202, 1401a, and 2111 of this title] (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) shall take effect on—

"(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

"(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force;

and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

"(2) EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.—If the President determines before January 1, 1981, that—

"(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

"(B) each of the member states of the European Economic Community has implemented the Agreement under its laws;

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) shall take effect on the date specified in the proclamation (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

"(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

"(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

"(b) APPLICATION OF OLD LAW VALUATION STANDARDS.—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

"(c) SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.—The amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

"(d) DEFINITION.—For purposes of this section, the term 'rubber footwear' means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] take effect)."

[The "Agreement" referred to in subsec. (a)(1)(A), above, was signed and accepted and by its terms entered into force with respect to the United States on January 1, 1981.]

PRESIDENTIAL REPORT TO CONGRESS ON OPERATION OF AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE OVER TWO-YEAR PERIOD

Section 203 of Pub. L. 96-39 provided that: "As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect [see Effective Date of 1979 Amendment note set out above], the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) [section 2503(a) of this title] (hereinafter in this subtitle referred to as the 'Agreement'), both domestically and internationally, during that period."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1351, 1500, 2112, 2481 of this title; title 26 section 993.

§ 1402. Value (Alternative)

REPEAL OF SECTION

Pub. L. 96-39, title II, §§ 201(b), 204(a), July 26, 1979, 93 Stat. 201, 202, provided that this section is repealed effective Jan. 1, 1981, upon entry into force with respect to the United States of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation. See section 204 of Pub. L. 96-39 set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

PART II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

§ 1451. Extra compensation

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 267 of this title. In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the appropriate customs officer shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the[1] such customs officer, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 1450 and 1452 of this title, and the provisions of section 267 of this title insofar as such section 267 of this title requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the appropriate customs officer, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided.

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[1] So in original. The word "the" probably should be omitted.

[*See main edition for section credits*]

CODIFICATION

This section is set out in this supplement to correct a typographical error appearing in the main edition.

§ 1466. Equipment and repairs of vessels

(a) Vessels subject to duty; penalties

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) Notice

If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

(1) describe the circumstances of the alleged violation;

(2) specify all laws and regulations allegedly violated;

(3) disclose all the material facts which establish the alleged violation;

(4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and

(5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) Violation

After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b) of this section, the appropriate customs officer shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b) of this section.

(d) Remission for necessary repairs

If the owner or master of such vessel furnishes good and sufficient evidence that—

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;

(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) Vessels used primarily for purposes other than transporting passengers or property in the foreign or coasting trade

In the case of any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade which arrives in a port of the United States two years or more after its last departure from a port of the United States, the duties imposed by this section shall apply only with respect to (1) fish nets and netting, and (2) other equipments, and parts thereof, and repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(f) Repair parts, materials, and expenses of repairs in foreign countries upon United States civil aircraft

The duty imposed under subsection (a) of this section shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of headnote 3 to Schedule 6, part 6, subpart C of the Tariff Schedules of the United States.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 206, 92 Stat. 900 ; July 26, 1979, Pub. L. 96-39, title VI, § 601(a)(3), 93 Stat. 268.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (f), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-39 added subsec. (f).

1978—Subsec. (a). Pub. L. 95-410, § 206(1), incorporated seizure and forfeiture provision formerly a part of first sentence in an inserted second sentence; substituted therein "willfully or knowingly" for "willfully and knowingly" and "such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture" for "such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited"; and authorized the seizure and forfeiture for making false statements in respect of purchases or repairs or aiding or procuring the making of false statements.

Subsecs. (b) to (e). Pub. L. 95-410, § 206(2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 601(a) of Pub. L. 96-39 provided in part that the amendment by Pub. L. 96-39 is effective upon a Presidential proclamation authorized to be made after Sept. 30, 1979, when the conditions under section 2503(b) of this title on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled.

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

§ 1483. Consignee as owner of merchandise

For the purposes of this subtitle—

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading or the holder of an air waybill duly indorsed by the consignee therein named, or, in the case of a bill of lading if consigned to order, by the consignor, shall be deemed the consignee thereof; except that this section shall not limit in any way the rights of the consignor, as prescribed by article 12 of the Warsaw Convention (49 Stat. 3017). The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States maybe regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 1484 of this title (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 207, 92 Stat. 901.)

REFERENCES IN TEXT

Warsaw Convention, including article 12, referred to in subd. (1), is set out as a note under section 1502 of Title 49, Transportation.

AMENDMENTS

1978—Par. (1). Pub. L. 95-410 inserted "or the holder of an air waybill" following "bill of lading" and "in the case of a bill of lading" preceding "if consigned to order, by the consignor" and provided that this section was not to limit the rights of the consignor, as prescribed by article 12 of the Warsaw Convention.

§ 1484. Entry of merchandise

(a) Requirement and time

(1) Except as provided in sections 1490, 1498, 1552, 1553, and 1336(j) of this title and in subsections (h) and (i) of this section, the consignee of imported merchandise, either in person or by an agent authorized by the consignee in writing—

(A) shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and

(B) shall file (at the time required under paragraph (2)(B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary shall by regulation prescribe.

(B) The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all consignees of imported merchandise.

[*See main edition for text of* (*b*)]

(c) Production of bill of lading

The consignee shall produce the bill of lading at the time of making entry, except that—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The provisions of this subsection shall not apply in the case of an entry under subdivision (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

[*See main edition for text of* (*d*)]

(e) Statistical enumeration

The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

[*See main edition for text of* (*f*) *to* (*i*)]

(j) Release of merchandise

Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceedings against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.

(As amended Aug. 17, 1977, Pub. L. 95-106, § 4, 91 Stat. 869; Oct. 3, 1978, Pub. L. 95-410, title I, § 102(a), 92 Stat. 888.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-410, § 102(a)(1), incorporated former first sentence in introductory text of par. designated (1), added subpars. (A) and (B) and par. (2), and deleted former second sentence which required the entry to be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the appropriate customs officer authorized in writing a longer time.

Subsec. (c)(3). Pub. L. 95-410, § 102(a)(2), substituted "subsection" for "subdivision".

Subsec. (j). Pub. L. 95-410, § 102(a)(3), struck out the second sentence which read "The custom officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made."

1977—Subsec. (e). Pub. L. 95-106 substituted "production and programs for achieving international harmonization of trade statistics," for "production,".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(b) of Pub. L. 95-410 provided that: "The amendments [to subsecs. (a), (c)(3), and (j) of this section] by this section shall take effect 60 days after the date of enactment of this Act [Oct. 3, 1978]."

§ 1485. Declaration

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Deceased or insolvent persons; partnerships and corporations

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or trustee in a case under title 11, shall be considered as the consignee; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 315, 92 Stat. 2678.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-598 substituted "trustee in a case under title 11" for "receiver or trustee in bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1514 of this title; title 15 section 70g.

§ 1491. Unclaimed merchandise; disposition of forfeited distilled spirits, wines and malt liquor

(a) Any entered or unentered merchandise (except merchandise entered under section 1557 of this title, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, storage, and other charges, if permitted to remain in public store or bonded warehouse for a period of one year, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 1559 of this title may be entered or withdrawn from consumption at any time prior to such sale upon payment of all duties, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, charges, and expenses nor may it be entered for warehouse. The computation of duties for the purposes of this section and sections 1493 and 1559 of this title shall be at the rate or rates applicable at the time the merchandise becomes subject to sale.

(b) All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) delivery to such Government agencies, as in the opinion of the Secretary have a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency:

(2) gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;

(3) sale by appropriate customs officer at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

(4) destruction.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 208, 92 Stat. 901.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-410, § 208(2), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 95-410, § 208(3), added subsec.(b).

§ 1496a. Clearance restrictions of individuals returning from abroad; special circumstances; "baggage and effects" defined

Except as otherwise provided by law, no individual returning to the United States from abroad shall be—

(1) entitled to the admission of his or her baggage and effects free of duty without entry; or

(2) entitled to expedited customs examination and clearance of his or her baggage and effects.

Paragraph (2) shall not apply to individuals in special circumstances (including being seriously ill or infirm, having been summoned by news of afficiation or disaster, and accompanying the body of a deceased relative). For purposes of this section, the term "baggage and effects" means any article which was in the possession of the individual while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.

(Pub. L. 95-410, title II, § 215, Oct. 3, 1978, 92 Stat. 904.)

CODIFICATION

Section was enacted as part of Customs Procedural Reform and Simplification Act of 1978, and not as part of Tariff Act of 1930 which comprises this chapter.

CLEARANCE PROCEDURES STUDY; REPORT TO CONGRESSIONAL COMMITTEES

Section 216 of Pub. L. 95-410 provided that: "The Comptroller General, in cooperation with the Customs Service of the Department of the Treasury and the Immigration and Naturalization Service of the Department of Justice, shall study clearance procedures for individuals entering or reentering the United States. The study shall include an analysis and comparison of the clearance procedures employed by other countries for individuals entering or reentering such other countries and an analysis of the usefulness of preentry forms completed by travelers for use when entering or reentering the United States. The Comptroller General shall report the results of his study and any recommendations he may have for expediting the clearance process (including recommendations for legislation) to the Committee on Finance of the United States Senate and to the Committee on Ways and Means of the House of Representatives not later than September 1, 1979."

§ 1498. Entry under regulations

REFERENCES IN TEXT

The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 1500. Appraisement, classification, and liquidation procedure

The appropriate customs officer shall, under rules and regulations prescribed by the Secretary—

(a) appraise merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended July 26, 1979, Pub. L. 96-39, title II, § 202(a)(4), 93 Stat. 202.)

AMENDMENTS

1979—Par. (a). Pub. L. 96-39 substituted "by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document" for "in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1981, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation, see section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1501, 1503, 1504 of this title.

§ 1502. Regulations for appraisement and classification

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury under subsec. (a) of this section, insofar as subsec. (a) of this section provides authority to issue regulations and disseminate information and insofar as the Secretary of the Treasury had responsibility under sections 1303 and 1671 et seq. of this title for the functions transferred to the Secretary of Commerce by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979, were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(F), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, to be exercised in consultation with the Secretary of the Treasury.

All functions of the Secretary of the Treasury under subsec. (b) of this section with respect to the functions transferred to the Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 were transferred to the Secretary of Commerce pursuant to section 5(a)(1)(F) of Reorg. Plan No. 3 of 1979.

§ 1504. Limitation on liquidation

(a) Liquidation

Except as provided in subsection (b) of this section, an entry of merchandise not liquidated within one year from:

(1) the date of entry of such merchandise;

(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry; or

(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 1505(a) of this title, duties may be deposited after the filing of an entry or withdrawal from warehouse;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(b) Extension

The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in regulations, if—

(1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

(2) liquidation is suspended as required by statute or court order; or

(3) the importer, consignee, or his agent requests such extension and shows good cause therefor.

(c) Notice of suspension

If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer or consignee concerned and to any authorized agent and surety of such importer or consignee.

(d) Limitation

Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer, his consignee, or agent, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.

(June 17, 1930, ch. 497, title IV, § 504, as added Oct. 3, 1978, Pub. L. 95-410, title II, § 209(a), 92 Stat. 902.)

PRIOR PROVISIONS

A prior section 1504, act June 17, 1930, ch. 497, title IV, § 504, 46 Stat. 732, which related to duties on coverings and containers, was repealed by Pub. L. 87-456, title III, § 301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87-456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

EFFECTIVE DATE

Section 209(b) of Pub. L. 95-410 provided that "The amendment made by this section [enacting this section] applies to the entry or withdrawal of merchandise for consumption on or after 180 days after the enactment of this Act [Oct. 3, 1978]."

§ 1505. Payment of duties

(a) Deposit of estimated duties

Unless merchandise is entered for warehouse or transportation, or under bond, the consignee shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.

(b) Collection or refund

The appropriate customs officer shall collect any increased or additional duties due or refund any excess of duties deposited as determined on a liquidation or reliquidation.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 103, 92 Stat. 889.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-410 authorized deposit of estimated duties to be made as prescribed by regulations after time of making entry but not later than thirty days after the date of entry.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1504, 1557 of this title.

§ 1508. Recordkeeping

(a) Requirements

Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

(1) pertain to any such importation, or to the information contained in the documents required by this chapter in connection with the entry of merchandise; and

(2) are normally kept in the ordinary course of business.

(b) Period of time

The records required by subsection (a) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.

(c) Limitation

For the purposes of this section and section 1509 of this title, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(June 17, 1930, ch. 497, title IV, § 508, as added Oct. 3, 1978, Pub. L. 95-410, title I, § 104, 92 Stat. 889.)

PRIOR PROVISIONS

A prior section 1508, acts June 17, 1930, ch. 497, title IV, § 508, 46 Stat. 732; Aug. 8, 1953, ch. 397, § 19, 67 Stat. 518, which related to commingling of goods, was repealed by Pub. L. 87-456, title III, § 301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87-456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1509 of this title.

§ 1509. Examination of books and witnesses

(a) Authority

In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty and taxes due or duties and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;

(2) summon, upon reasonable notice—

  (A) the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

  (B) any officer, employee, or agent of such person,

  (C) any person having possession, custody, or care of records relating to such importation, or

  (D) any other person he may deem proper,

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, required to be kept under section 1508 of this title, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) Service of summons

A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(c) Special procedures for third-party summonses

(1) For purposes of this subsection—

(A) The term "records" includes statements, declarations, or documents required to be kept under section 1508 of this title.

(B) The term "summons" means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term "third-party recordkeeper" means—

(i) any customhouse broker;

(ii) any attorney; and

(iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the import transactions of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the import transactions of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 1510 of this title; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 105, 92 Stat. 889.)

AMENDMENTS

1978—Pub. L. 95-410 substituted subsec. (a) to (c) provisions for examination of books and witnesses for prior provisions for examination of importer and others, which authorized appropriate customs officers to issue citations for examination under oath of any owner, importer, consignee, agent, or other person upon any material matter or thing respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty and to require production of any letters, accounts, contracts, invoices, or other documents relating to the merchandise, and the reduction of the testimony to writing, required the testimony to be filed and preserved under Customs Court rules, and authorized consideration of the evidence in subsequent proceedings relating to the merchandise.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1508, 1510 of this title.

§ 1510. Judicial enforcement

(a) Order of court

If any person summoned under section 1509 of this title does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Sanctions

(1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 1509 of this title and for refusing to obey the order of the court, remains in contempt, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 106, 92 Stat. 891.)

References in Text

The customs laws, referred to in subsec. (b)(2), are classified generally to this title.

Amendments

1978—Pub. L. 95-410 substituted judicial enforcement provisions covering court order for compliance with administrative summonses and imposition of specified sanctions for prior provisions covering imposition of penalties for refusal to give testimony, including provision for a penalty of not less than $20 nor more than $500 for refusing to appear or to produce documents or to subscribe his name to a deposition or refusing to answer interrogatories; deeming the last made appraisement of the merchandise as final where an owner, importer, or consignee failed to comply with the examination provisions; deeming the person falsely swearing on an examination guilty of perjury; and forfeiture of the merchandise where the person was an owner, importer, or consignee, or the recovery of its value from him.

Section Referred to in Other Sections

This section is referred to in section 1509 of this title.

§ 1511. Repealed. Pub. L. 95-410, title I, § 107, Oct. 3, 1978, 92 Stat. 892

Section, acts June 17, 1930, ch. 497, title IV, § 511, 46 Stat. 733; June 2, 1970, Pub. L. 91-271, title III, § 301(p), 84 Stat. 290, provided for inspection of importer's books and is now covered by sections 1508 and 1510 of this title.

§ 1514. Protest against decision of appropriate customs officer

(a) Finality of decisions; return of papers

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9)(C), (D), and (E) of this title), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

[*See main edition for text of* (*1*) *to* (*7*)]

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of title 28 within the time prescribed by section 2631 of that title. When a judgment or order of the United States Customs Court has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

(b) Finality and conclusiveness of customs officers' determinations

With respect to determinations made under section 1303 of this title or subtitle IV of this chapter which are reviewable under section 1516a of this title, determinations of the appropriate customs officer are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 1516a of this title is commenced in the United States Customs Court.

(c) Form, number, and amendment of protest; filing of protest

(1) A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor. Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) of this section which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with

the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section. Except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; or

(E) any authorized agent of any of the persons described in clauses (A) through (D).

(2) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with such customs officer within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) Limitation on protest of reliquidation

The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the customs officer upon any question not involved in such reliquidation.

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(3), 93 Stat. 305.)

Amendments

1979—Subsec. (a). Pub. L. 96-39, § 1001(b)(3)(A), (B), inserted reference to subsection (b) of this section and substituted "section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9)(C), (D), and (E) of this title)" for "section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers)" in the provisions preceding par. (1).

Subsec. (b). Pub. L. 96-39, § 1001(b)(3)(D), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c)(1). Pub. L. 96-39, § 1001(b)(3)(C), (E), redesignated former subsec. (b)(1) as (c)(1) and, in subsec. (c)(1) as so redesignated, substituted provisions that, except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed by importers or consignees or their sureties, persons paying a charge or exaction, persons seeking entry or delivery, persons filing a claim for drawback, and authorized agents of such persons for provisions that, except as otherwise provided in section 1557(b) of this title, protests could be filed only by importers, consignees, or the authorized agents of persons paying any charges, or exactions, persons filing claims for drawback, or persons seeking entry or delivery.

Subsec. (c)(2). Pub. L. 96-39, § 1001(b)(3)(C), (F), redesignated former subsec. (b)(2) as (c)(2) and, in subsec. (c)(2) as so redesignated, added provision that a protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond and that, if another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

Subsec. (d). Pub. L. 96-39, § 1001(b)(3)(C), redesignated former subsec. (c) as (d).

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

Transfer of Functions

All functions of the Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1402, 1515, 1557, 1592, 2013 of this title; title 28 sections 1582, 2632.

§ 1515. Review of protests; administrative review and modification of decisions; request for accelerated disposition of protest

(a) Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 1514 of this title, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. Such notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 1514 of this title.

[*See main edition for text of* (*b*)]

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(2), 93 Stat. 304.)

Amendments

1979—Subsec. (a). Pub. L. 96-39 required that notice of denial include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 1514 of this title.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

Transfer of Functions

All functions of the Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 1516. Petitions by domestic interested parties

(a) Request for classification and rate of duty; petition

The Secretary shall, upon written request by an interested party (as defined in section 1677(9)(C), (D), and (E) of this title) furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

(1) a description of the merchandise,

(2) the appraised value, the classification, or the rate of duty that it believes proper, and

(3) the reasons for its belief.

(b) Determination on petition

If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) Contest by petitioner of appraised value, classification, or rate of duty

If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) Appraisal, classification, and liquidation of entries of merchandise covered by published decisions of the Secretary

Notwithstanding the filing of an action pursuant to section 2632 of title 28, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) Consignee or his agent as party in interest before the Customs Court

The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court.

(f) Appraisement, classification, and assessment of duty of merchandise covered by published decision of the Secretary in accordance with final judicial decision of Customs Court or Court of Customs and Patent Appeals sustaining cause of action in whole or in part; suspension of liquidation of entries; publication

If the cause of action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) Regulations implementing required procedures

Regulations shall be prescribed by the Secretary to implement the procedures required under this section.

(h) Redesignated (g)

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(1), 93 Stat. 303.)

AMENDMENTS

1979—Pub. L. 96-39 completely revised the section to provide an expedited process for judicial review of an appealable determination, expanded the size of the group of parties having standing to obtain review of an appealable determination, and, in the revision process, re-wrote subsecs. (a), (b), and (c), redesignated former subsecs. (e), (f), (g), and (h) as (d), (e), (f), and (g), and struck out former subsec. (d) relating to the contest of the Secretary's determination that foreign merchandise was not being sold in the United States at less than fair value or that bounty or grant was not being paid.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 11288, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of notice of—

(A) a determination by the Secretary or the administering authority, under section 1303(a)(3), 1671a(c), or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the administering authority, under section 1671b(c) or 1673b(c) of this title, that a case is extraordinarily complicated,

(C) a determination by the administering authority or the Commission, under section 1675(b) of this title, not to review an agreement or a determination based upon changed circumstances,

(D) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(E) a negative determination by the administering authority under section 1671b(b) or 1673b(b) of this title,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after the date of publication in the Federal Register of—

(i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, or by the administering authority and by the Commission under section 1671d or 1673d of this title.

(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 1303, 1671d, or 1673d of this title.

(iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation.

(v) An injurious effect determination by the Commission under section 1671c(h) or 1673c(h) of this title.

(3) Procedures and fees

The procedures and fees set forth in subsections (b), (c), and (e) of section 2632 of title 28 apply to an action under this section.

(b) Standards of review

(1) Remedy

The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) Record for review

(A) In general

For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Customs Court, or of the United States Court of Customs and Patent Appeals, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief

In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Customs Court may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances. In ruling on a request for such injunctive relief, the court shall consider, among other factors, whether—

(A) the party filing the action is likely to prevail on the merits,

(B) the party filing the action would be irreparably harmed if liquidation of some or all of the entries is not enjoined,

(C) the public interest would best be served if liquidation is enjoined, and

(D) the harm to the party filing the action would be greater if liquidation of some or all of the entries is not enjoined than the harm to other persons if liquidation of some or all of the entries is enjoined.

(3) Remand for final disposition

If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing

Any interested party who was a party to the proceeding under section 1303 of this title or subtitle IV of this chapter shall have the right to appear and be heard as a party in interest before the United States Customs Court. The party filing the action shall notify all interested parties of the filing of an action pursuant to this section.

(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) Definitions

For purposes of this section—

(1) Administering authority

The term "administering authority" means the administering authority described in section 1677(1) of this title.

(2) Commission

The term "Commission" means the United States International Trade Commission.

(3) Interested party

The term "interested party" means any person described in section 1677(9) of this title.

(4) Secretary

The term "Secretary" means the Secretary of the Treasury.

(June 17, 1930, ch. 497, title IV, § 516A, as added July 26, 1979, Pub. L. 96-39, title X, § 1001(a), 93 Stat. 300.)

CODIFICATION

In the original, section 1001(a) of Pub. L. 96-39 directed that this section, designated as section 516A, be added to title V of the Tariff Act of 1930, however, since a title V of the Tariff Act of 1930 has not been enacted, this section was added to title IV of the Tariff Act of 1930 to reflect the probable intent of Congress.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1002 of Pub. L. 96-39 provided that:

"(a) EFFECTIVE DATE.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall take effect on that date (hereinafter in this section referred to as the 'effective date') on which title VII of the Tariff Act of 1930 [subtitle IV of this chapter] (as added by title I of this Act) takes effect [Jan. 1, 1980]; and section 515(a) of such Act of 1930 [section 1515(a) of this title] (as amended by section 1001(b)(2)) shall apply with respect to any denial, in whole or in part, of a protest filed under section 514 of such Act of 1930 [section 1514 of this title] on or after the effective date.

"(b) TRANSITIONAL RULES.

"(1) CERTAIN PROTESTS, PETITIONS, ACTIONS, ETC.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall not apply with respect to—

"(A) any protest, petition, or notice of desire to contest filed before the effective date [Jan. 1, 1980] under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930 [section 1514, 1516(a), or 1516(d) of this title];

"(B) any civil action commenced before the effective date [Jan. 1, 1980] under section 2632 of title 28 of the United States Code; or

"(C) any civil action commenced after the effective date [Jan. 1, 1980] under such section 2632 if the protest, petition, or notice of desire to contest (under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930) on which such action is based was filed before such effective date.

"(2) LAW TO BE APPLIED FOR PURPOSES OF SUCH ACTIONS.—Notwithstanding the repeal of the Antidumping Act, 1921 [sections 160 to 171 of this title], by section 106(a) of this Act, and the amendment of section 303 of the Tariff Act of 1930 [section 1303 of this title] by section 103 of this Act, the law in effect on the date of any finding or determination contested in a civil action described in subparagraph (A), (B), or (C) of paragraph (1) shall be applied for purposes of that action.

"(3) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY ASSESSMENTS.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall apply with respect to the review of the assessment of, or failure to assess, any countervailing duty or antidumping duty on entries subject to a countervailing duty order or antidumping finding if the assessment is made after the effective date. If no assessment of such duty had been made before the effective date that could serve the party seeking review as the basis of a review of the underlying determination, made by the Secretary of the Treasury or the International Trade Commission before the effective date, on which such order, finding, or lack thereof is based, then the underlying determination shall be subject to review in accordance with the law in effect on the day before the effective date.

"(4) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY DETERMINATIONS.—With respect to any preliminary determination or final determination of the Secretary of the Treasury under section 303 of the Tariff Act of 1930 [section 1303 of this title] or the Antidumping Act, 1921 [sections 160 to 171 of this title], which is treated under section 102 of this Act [set out as a note under section 1671 of this title] as if made under section 703(b), 705(a), 733(b), or 735(a) of the Tariff Act of 1930 [section 1671b(b), 1671d(a), 1673b(b), or 1673d(a) of this title] (as added by title I of this Act) such determinations shall be subject to judicial review in the same manner and to the same extent as if made on the day before the effective date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1514 of this title; title 28 sections 1541, 1582, 2632, 2633.

§ 1520. Refunds and errors

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Reliquidation of entry

Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction; or

[*See main edition for text of* (*2*)]

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 210, 92 Stat. 903.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-410 substituted "appropriate customs officer within one year after the date of liquidation or exaction" for "customs service within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction".

§ 1526. Merchandise bearing American trademark

(a) Importation prohibited

Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said title 15, unless written consent of the owner of such trademark is produced at the time of making entry.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Exemptions; publication in Federal Register; forfeitures; rules and regulations

(1) The trademark provisions of this section and section 1124 of title 15, do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trademark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Merchandise bearing counterfeit mark; seizure and forfeiture; disposition of seized goods

Any such merchandise bearing a counterfeit mark (within the meaning of section 1127 of title 15) imported into the United States in violation of the provisions of section 1124 of title 15, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,

(3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

(4) if the merchandise is unsafe or a hazard to health, by destruction.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 211(a), (c), 92 Stat. 903.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-410, § 211(a)(1), substituted "Except as provided in subsection (d) of this section, it" for "It".

Subsec. (d). Pub. L. 95-410, § 211(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 95-410, § 211(c), added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 1124; title 48 section 1643.

PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 1555. Bonded warehouses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2341.

§ 1557. Entry for warehouse

(a) Withdrawal of merchandise; time; payment of charges

Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within 5 years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

[*See main edition for text of* (b) *and* (c)]

(d) Withdrawal before payment

Merchandise may be withdrawn for consumption without the payment of the duty thereon if the consignee or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 1505 of this title.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 108(a), (b)(1), 92 Stat. 892.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-410, § 108(b)(1), substituted "5 years" for "three years" wherever appearing.

Subsec. (d). Pub. L. 95-410, § 108(a), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 108(b)(2) of Pub. L. 95-410 provided that: "For purposes of applying the amendments made by paragraph (1) [to subsec. (a) of this section and section 1559 of this title] to merchandise remaining in a bonded warehouse on the date of enactment of this Act [Oct. 3, 1978], any period of time the merchandise was in the bonded warehouse before that date shall be disregarded."

§ 1559. Warehouse goods deemed abandoned after 5 years

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond 5 years from the date of importation, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond 5 years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 108(b)(1), 92 Stat. 892.)

AMENDMENTS

1978—Pub. L. 95-410 substituted "5 years" for "three years" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Period of time prior to Oct. 3, 1978, disregarded in application of amendment to merchandise in bonded warehouse, see section 108(b)(1) of Pub. L. 95-410, set out as an Effective Date of 1978 Amendment note under section 1557 of this title.

PART V—ENFORCEMENT PROVISIONS

§ 1584. Falsity or lack of manifest; penalties

(a) General rule

(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided*, That if the appropriate customs officer shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term "clerical error" means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $50 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of $25 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 1594 of this title (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the appropriate customs officer, is given for the payment there-

of. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 802(17) and 802(15), respectively, of title 21.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707 of this title and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the appropriate customs officer shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) Procedures

(1) If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a)(1) of this section and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(A) describe the merchandise;

(B) set forth the details of the error in the manifest;

(C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) of this section for which the proposed penalty is $500 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a)(1) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 109, 92 Stat. 892.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-410, § 109(1)(A), (2)-(4), inserted introductory subsec. heading "(a) General rule.—", designated unnumbered first par. as par. (1), substituted for merchandise found or unladen but not included or described in the manifest a penalty the lesser of $10,000 or the domestic value of the merchandise for prior penalty equal to the value of the merchandise so found or unladen, made the above penalty and penalty of $500 for describing merchandise in the manifest without being found aboard the vessel or vehicle applicable to any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, and defined the term "clerical error".

Subsec. (a)(2). Pub. L. 95-410, § 109(1)(B), (5)-(7), designated unnumbered second par. as par. (2) and made the penalties of $50, $25, and $10 applicable to any person directly or indirectly responsible, respectively, for: heroin, morphine, cocaine, isonipecaine, or opiate being in the merchandise; smoking opium, opium prepared for smoking, or marihuana being in the merchandise; and crude opium being in the merchandise.

Subsec. (a)(3). Pub. L. 95-410, § 109(1)(C), designated unnumbered third par. as par. (3).

Subsec. (b). Pub. L. 95-410, § 109(8), added subsec. (b).

§ 1592. Penalties for fraud, gross negligence, and negligence

(a) Prohibition

(1) General rule

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct.

(b) Procedures

(1) Pre-penalty notice

(A) In general

If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, the appropriate customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of title 26) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(5) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties as a result of a violation of subsection (a) of this section, the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

(e) District court proceedings

Notwithstanding any other provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 1604 of this title for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 110(a), 92 Stat. 893.)

AMENDMENTS

1978—Pub. L. 95-410 substituted subsecs. (a) to (e) relating to penalties for fraud, gross negligence, and negligence for prior provisions which: provided for forfeiture of merchandise, or recovery of value thereof, where entry or attempted entry of the merchandise was made using fraudulent or false invoice, declaration, affidavit, letter, paper, or false statement, written or verbal, false or fraudulent practice or appliance, or false statement in a declaration on entry without reasonable cause to believe the truth of the statement or aided or procured the making any such false statement as to any material matter without reasonable cause to believe the truth of the statement, regardless of deprivation of lawful duties, or guilty of any willful act or omission when there was a deprivation of such duties; made the forfeiture applicable to the whole of the merchandise or the value thereof where package contained the particular articles to which the fraud or false paper or statement related; and defined attempt to enter the merchandise without an actual entry having been made or offered.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(f) of Pub. L. 95-410 provided that:

"(1)(A) Except as provided in subparagraphs (B) and (C), subsections (a), (b), and (c) (other than new subsection (e) of section 592 of the Tariff Act of 1930 as added by subsection (a)) [subsec. (a), (b), and (c), not including (e) of this section] shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act [Oct. 3, 1978].

"(B) Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 [this section] (as such section existed on the day before the date of enactment of this Act) [Oct. 3, 1978] shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—

"(i) occurred before the date of enactment of this Act, and

"(ii) was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.

"(C) Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a)) [subsec. (e) of this section] shall be effective on the date of enactment of this Act [Oct. 3, 1978]. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 [section 1604 of this title] for the recovery of any monetary penalty claimed under section 592 of such Act [this section] for an alleged intentional violation described in subparagraph (B)—

"(i) all issues, including the amount of the penalty, shall be tried de novo; and

"(ii) the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.

"(2)(A) The amendment made by subsection (e) [to section 1621 of this title] shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 [this section] resulting from gross negligence or negligence which are committed on or after the date of the enactment of this Act [Oct. 3, 1978].

"(B) In the case of any alleged violation of such section 592 [this section] resulting from gross negligence or negligence which was committed before the date of the enactment of this Act [Oct. 3, 1978] and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

"(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

"(ii) the closing date of the 2-year period beginning on such date of enactment,

whichever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 621 of the Tariff Act of 1930 [section 1621 of this title] (as in effect on the day before such date of enactment)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1613, 1615, 1621, 1671c, 1673c of this title.

§ 1599. Officers not to be interested in vessels or cargo

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of $500.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 212, 92 Stat. 904.)

AMENDMENTS

1978—Pub. L. 95-410 excepted from the interest prohibition ownership of a yacht or other pleasure boat.

§ 1603. Seizure; customs officer's reports

Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 110(b), 92 Stat. 896.)

AMENDMENTS

1978—Pub. L. 95-410 required report of seizure or violation to be made "promptly".

§ 1604. Seizure; prosecution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1592 of this title.

§ 1607. Seizure; value $10,000 or less

If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed $10,000 in value.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 111(a), 92 Stat. 897.)

AMENDMENTS

1978—Pub. L. 95-410 substituted "$10,000" for "$2,500" wherever appearing.

§ 1610. Seizure; value more than $10,000

If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 111(b), 92 Stat. 898.)

AMENDMENTS

1978—Pub. L. 95-410 substituted "$10,000" for "$2,500" wherever appearing.

§ 1612. Seizure; summary sale

Whenever it appears to the appropriate customs officer that any vessel, vehicle, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the value of such vessel, vehicle, merchandise, or baggage as determined under section 1606 of this title, does not exceed $10,000, and such vessels, vehicle, merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such value of such vessel, vehicle, merchandise, or baggage exceeds $10,000, such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, merchandise, or baggage so sold would have been subject to such claim.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 111(c), 92 Stat. 898.)

AMENDMENTS

1978—Pub. L. 95-410 substituted "$10,000" for "$2,500" wherever appearing.

§ 1613. Disposition of proceeds of forfeited property

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section incurred in such sale shall be returned to the person against whom the penalty was assessed.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 110(c), 92 Stat. 896.)

Amendments

1978—Subsec. (a). Pub. L. 95-410, § 110(c)(1), designated existing provisions as subsec. (a) and substituted "Except as provided in subsection (b) of this section, any" for "Any".

Subsec. (b). Pub. L. 95-410, § 110(c)(2), added subsec. (b).

§ 1615. Burden of proof in forfeiture proceedings

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

[*See main edition for text of* (*1*) *to* (*3*)]

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 110(d), 92 Stat. 896.)

Amendments

1978—Pub. L. 95-410 inserted "(other than those arising under section 1592 of this title)" following "In all suits or actions".

§ 1617. Compromise of Government claims by Secretary of Treasury

Transfer of Functions

All functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury under this section with respect to the functions transferred to the Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 1618. Remission or mitigation of penalties

Section Referred to in Other Sections

This section is referred to in section 1592 of this title.

§ 1621. Limitation of actions

No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered: *Provided*, That in the case of an alleged violation of section 1592 of this title arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 110(e), 92 Stat. 897.)

Amendments

1978—Pub. L. 95-410 prescribed for any suit or action for violation of section 1592 of this title arising out of gross negligence or negligence a five year limitation period following date of alleged violation.

Effective Date of 1978 Amendment

Effective date of amendment by Pub. L. 95-410 for alleged violation of section 1592 of this title arising out of gross negligence or negligence committed on or after Oct. 3, 1978, or before such date without commencement of proceedings except where barred by provisions of this section in effect prior to such date, see section 110(f)(2) of Pub. L. 95-410, set out as an Effective Date of 1978 Amendment note under section 1592 of this title.

§ 1625. Publication of decisions

Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this chapter with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.

(June 17, 1930, ch. 497, title IV, § 625, as added Oct. 3, 1978, Pub. L. 95-410, title I, § 112, 92 Stat. 898.)

PART VI—MISCELLANEOUS PROVISIONS

§ 1641. Customhouse brokers

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Triennial reports by customhouse brokers

On February 1, 1979, and on February 1 of each third year thereafter, each person who is licensed as a customhouse broker under this section shall file with the Secretary a report as to—

(1) whether such person is actively engaged in business as a customhouse broker; and

(2) the name under, and the address at, which such business is being transacted.

(As amended Oct. 3, 1978, Pub. L. 95-410, title I, § 113, 92 Stat. 898.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-410 added subsec. (e).

§ 1651. Repeals

REFERENCES IN TEXT

The Antidumping Act, 1921, referred to in subsec. (d)(5), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

§ 1652. Separability of provisions

CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

Pub. L. 95-410, title IV, § 401, Oct. 3, 1978, 92 Stat. 905, provided: "If any provision of this Act [see Short Title of 1978 Amendment note set out under section 1654 of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby."

§ 1654. Short title

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-410, § 1, Oct. 3, 1978, 92 Stat. 888, provided: "That this Act [which enacted sections 58a, 1202 sched. 8 pt. 6, 1496a, 1504, 1508, 1625, and 2075 of this title, amended sections 467, 1202 sched. 8 pts. 2 and 5, 1315, 1321, 1466, 1483, 1484, 1491, 1505, 1509, 1510, 1520, 1526, 1557, 1559, 1584, 1592, 1599, 1603, 1607, 1610, 1612, 1613, 1615, 1621, and 1641 of this title, section 1124 of Title 15, Commerce and Trade, and section 883 of Title 46, Shipping, repealed sections 58 and 1511 of this title and sections 329, 330, and 333 of Title 46, and enacted provisions set out as notes under sections 1202 sched. 8 pts. 2 and 6, 1434, 1496a, 1504, 1557, 1592, and 1652 of this title] may be cited as the 'Customs Procedural Reform and Simplification Act of 1978'."

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES [NEW]

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1303, 1401a, 1514, 1516a of this title.

PART I—IMPOSITION OF COUNTERVAILING DUTIES

CODIFICATION

The headings "SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES" and "PART I—IMPOSITION OF COUNTERVAILING DUTIES" read in the original "TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES" and "SUBTITLE A—IMPOSITION OF COUNTERVAILING DUTIES" respectively, and were editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1677, 1677a, 2251 of this title.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy.

(b) Country under the Agreement

For purposes of this part, the term "country under the Agreement" means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2503(b) of this title,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) Cross reference

For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 1303 of this title.

(June 17, 1930, ch. 497, title VII, § 701, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 151.)

EFFECTIVE DATE

Section 107 of Pub. L. 96-39, title I, provided that: "Except as otherwise provided in this title, this title and the amendments made by it [enacting this subtitle, amending sections 1303, 1337, 2033, and 2251 of this title, repealing sections 160 to 171 of this title, and enacting provisions set out as notes under this section and sections 160 and 1303 of this title] shall take effect on January 1, 1980, if—

"(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

"(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act [section 2503(a) of this title] have entered into force with respect to the United States as of that date."

[These agreements entered into force with respect to the United States on Dec. 17, 1979.]

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

INVESTIGATIONS PENDING ON JANUARY 1, 1980

Section 102 of Pub. L. 96-39 provided that:

"(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, there is an investigation in progress under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

"(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to this title [this subtitle] as if the affirmative determination called for in section 702 of that Act [section 1671a of this title] were made with respect to that matter on the effective date of the application of title VII of that Act [this subtitle] to such country.

"(2) If the Secretary has made a preliminary determination under such section 303 [section 1303 of this title], but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to the provisions of title VII of that Act [this subtitle] as if the preliminary determination under section 303 [section 1303 of this title] were a preliminary determination under section 703 of that title [section 1671b of this title] made on the effective date of the application of that title [this subtitle] to such country.

"(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above], there is an investigation in progress under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

"(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to the question of less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921 [section 160(c)(2) of this title], and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the affirmative determination called for in section 732 [section 1673a of this title] were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

"(2) If the Secretary has made under the Antidumping Act, 1921 [sections 160 to 171 of this title], a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], were a preliminary determination under section 733 of that title [section 1673b of this title] made on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above].

"(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 [section 1303 of this title] or section 201(a) of the Antidumping Act, 1921 [section 160(a) of this title], as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930 [part I or II of this subtitle], which shall be completed within 75 days, and—

"(1) treat any final determination of the Secretary of the Treasury under section 303 [section 1303 of this title] as a final determination under section 705(a) of the Tariff Act of 1930 [section 1671d(a) of this title] and consider the net amount of the bounty or grant estimated or determined under section 303 [section 1303 of this title] as the net subsidy amount under subtitle A of that title [part I of this subtitle]; and

"(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921 [sections 160 to 171 of this title], as a final determination under section 735(a) of the Tariff Act of 1930 [section 1673d(a) of this title]."

TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS

Section 104 of Pub. L. 96-39 provided that:

"(a) WAIVED COUNTERVAILING DUTY ORDERS.—

"(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

"(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

"(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act) [subsec. (c)(1) of this section], which is a product of a country under the Agreement,

"(B) published on or after the date of the enactment of this Act [July 26, 1979], and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930) [subsec. (b) of this section], or

"(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

"(2) Determination by the commission.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

"(A) an industry in the United States—

"(i) is materially injured, or

"(ii) is threatened with material injury, or

"(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise subject to the order.

"(3) Effect of determination.—

"(A) Affirmative determination.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 [section 1303 of this title] which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act [section 1675(d) of this title].

"(B) Negative determination.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

"(b) Other countervailing duty orders.—

"(1) Review by commission upon request.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

"(A) which is not a countervailing duty order to which subsection (a) applies,

"(B) which applies to merchandise which is the product of a country under the Agreement, and

"(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act [section 1516(d) of this title] before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] shall make a determination under paragraph (2) of this subsection.

"(2) Determination by the commission.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

"(A) an industry in the United States—

"(i) would be materially injured, or

"(ii) would be threatened with material injury, or

"(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

"(3) Suspension of liquidation; investigation time limits.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

"(4) Effect of determination.—

"(A) Affirmative determination.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930 [section 1675(c) of this title].

"(B) Negative determination.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

"(c) All outstanding countervailing duty orders.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 [section 1303 of this title] which is—

"(1) in effect on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] (as added by section 101 of this Act), or

"(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930 [section 1516(d) of this title],

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930 [section 1675 of this title].

"(d) Publication of notice of determinations.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

"(e) Definitions.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 [section 1677 of this title] is used in this section, it has the same meaning as when it is used in title VII of that Act [this subtitle]."

Section Referred to in Other Sections

This section is referred to in sections 1303, 1337, 1671a, 1671e of this title.

§ 1671a. Procedures for initiating a countervailing duty investigation

(a) Initiation by administering authority

A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1671(a) of this title exist.

(b) Initiation by petition

(1) Petition requirements

A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1671(a) of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) Petition determination

Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) Notification to Commission of determination

The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(June 17, 1930, ch. 497, title VII, § 702, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 151.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b of this title.

§ 1671b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1671a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1671a(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) Preliminary determination by administering authority

Within 85 days after the date on which a petition is filed under section 1671a(b) of this title, or an investigation is commenced under section 1671a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination, then the administering authority may postpone making the preliminary determination under subsection (b) of this section until not later than the 150th day after the date on which a petition is filed under section 1671a(b) of this title, or an investigation is commenced under section 1671a(a) of this title.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered

(f) Notice of determinations

Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(June 17, 1930, ch. 497, title VII, § 703, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 152.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1516a, 1671c, 1671d, 1671e, 1671f, 1673d, 1677 of this title.

§ 1671c. Termination or suspension of investigation

(a) Termination of investigation on withdrawal of petition

An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1671b(b) of this title.

(b) Agreements to eliminate or offset completely a subsidy or to cease exports of subsidized merchandise

The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b) of this section, or from exporters described in subsection (b) of this section, if the agreement will eliminate completely the injurious effect of exports to the United States of the merchandise which is the subject of the investigation.

(2) Certain additional requirements

Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net subsidy will be offset.

(3) Quantitative restrictions agreements

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

(4) Definition of extraordinary circumstances

(A) Extraordinary circumstances

For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex

For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) Exports of merchandise to United States not to increase during interim period

The administering authority may not accept any agreement under subsection (b) of this section unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (b) or (c) of this section, the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1671b(b) of this title with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of net subsidy

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 1671b(d)(1) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 1671b(d)(1) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1671b(d)(2) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1671d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(1) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1671b(d)(2) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1671b(d)(1) of this title of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 1671b(b) of this title were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the liquidation of which was suspended, and

(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1671d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c) of this section.

(June 17, 1930, ch. 497, title VII, § 704, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 154.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1516a, 1675 of this title.

§ 1671d. Final determinations

(a) Final determination by administering authority

(1) In general

Within 75 days after the date of its preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise.

(2) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1671b(e) of this title, shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1671b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of that merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, the administering authority shall order under paragraphs (1) and (2) of section 1671b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue a countervailing duty order under section 1671e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(1) of this title, and

(B) release any bond or other security and refund any cash deposit required under section 1671b(d)(2) of this title.

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 1671b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1671b(d)(2) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1671b(e)(2) of this title.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(June 17, 1930, ch. 497, title VII, § 705, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 159.)

Section Referred to in Other Sections

This section is referred to in sections 1303, 1516a, 1671c, 1671e, 1671f, 1675, 1677, 1677c, 1677g of this title.

§ 1671e. Assessment of duty

(a) Publication of countervailing duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1671d(b) of this title, the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duties

(1) General rule

If the Commission, in its final determination under section 1671d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1671b(d)(1) of this title, would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 1671b(d)(1) of this title, shall be subject to the imposition of countervailing duties under section 1671(a) of this title.

(2) Special rule

If the Commission, in its final determination under section 1671d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 1671d(b) of this title shall be subject to the imposition of countervailing duties under section 1671(a) of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(June 17, 1930, ch. 497, title VII, § 706, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 160.)

Section Referred to in Other Sections

This section is referred to in sections 1671c, 1671d, 1671f of this title.

§ 1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders

(a) Deposit of estimated countervailing duty under section 1671b(d)(2) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 1671b(d)(2) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated countervailing duty under section 1671e(a)(3) of this title

If the amount of an estimated countervailing duty deposited under section 1671e(a)(3) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1671e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1671e(a)(3) of this title is higher than the duty determined under the order, together with interest as provided by section 1677g of this title.

(June 17, 1930, ch. 497, title VII, § 707, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 161.)

PART II—IMPOSITION OF ANTIDUMPING DUTIES

CODIFICATION

The heading "PART II—IMPOSITION OF ANTIDUMPING DUTIES" read in the original "SUBTITLE B—IMPOSITION OF ANTIDUMPING DUTIES" and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1337, 1677, 2033, 2251 of this title.

§ 1673. Imposition of antidumping duties

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise.

(June 17, 1930, ch. 497, title VII, § 731, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 162.)

EFFECTIVE DATE

Part effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1337, 1673a, 1673d, 1673e, 1673g, 1673i of this title.

§ 1673a. Procedures for initiating an antidumping duty investigation

(a) Initiation by administering authority

An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1673 of this title exist.

(b) Initiation by petition

(1) Petition requirements

An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) Petition determination

Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether

the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) Notification to Commission of determination

The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(June 17, 1930, ch. 497, title VII, § 732, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 162.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673b of this title.

§ 1673b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1673a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1673a(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) Preliminary determination by administering authority.

(1) Period of antidumping duty investigation

Within 160 days after the date on which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

(2) Preliminary determination under waiver of verification

Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) of this section until not later than the 210th day after the date on which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) Notice of determinations

Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(June 17, 1930, ch. 497, title VII, § 733, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 163.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673c, 1673d, 1673e, 1673f, 1677, 1677e of this title.

§ 1673c. Termination or suspension of investigation

(a) Termination of investigation on withdrawal of petition

An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise

The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the

subject of the agreement exceeds the United States price of that merchandise.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) Definition of extraordinary circumstances

(A) Extraordinary circumstances

For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex

For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) Exports of merchandise to United States not to increase during interim period

The administering authority may not accept any agreement under subsection (b)(1) of this section unless that agreement provides a means of ensuring that the quantity of the merchandise covered by the agreement exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation.

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1673b(b) of this title with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of dumping margin

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 1673b(d)(1) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1673b(d)(2) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, the liquidation of entries of the merchandise subject to the investigation shall be suspended under section 1673b(d)(1) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1673b(d)(2) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1673d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), or (E) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1673b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(1) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(2) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1673b(d)(1) of this title of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue an antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended, and

(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1673d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation without regard to the effect of any agreement under subsection (b) or (c) of this section.

(June 17, 1930, ch. 497, title VII, § 734, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 165.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1675 of this title.

§ 1673d. Final determinations

(a) Final determination by administering authority

(1) General rule

Within 75 days after the date of its preliminary determination under section 1673b(b) of this title, the administering authority shall make a final determination of whether the merchandise which was the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination

The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 1673b(b) of this title if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was negative.

(3) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1) of this section.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1673b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) of this section to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 1673 of this title retroactively on those imports.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of the merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, the administering authority shall order under paragraphs (1) and (2) of section 1673b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue an antidumping duty order under section 1673e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(1) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(2) of this title.

(3) Effect of negative determinations under subsections (a)(3) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 1673b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1673b(d)(2) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1673b(e)(2) of this title.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(June 17, 1930, ch. 497, title VII, § 735, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 169.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673c, 1673e, 1673f, 1675, 1677, 1677c, 1677g of this title.

§ 1673e. Assessment of duty

(a) Publication of antidumping duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1673d(b) of this title, the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duty

(1) General rule

If the Commission, in its final determination under section 1673d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1673b(d)(1) of this title would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under section 1673b(d)(1) of this title, shall be subject to the imposition of antidumping duties under section 1673 of this title.

(2) Special rule

If the Commission, in its final determination under section 1673d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 1673d(b) of this title shall be subject to the assessment of antidumping duties under section 1673 of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Security in lieu of estimated duty pending early determination of duty

(1) Conditions for waiver of deposit of estimated duties

The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a) of this section, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) of this section if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a) of this section, the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(A) an affirmative preliminary determination by the administering authority under section 1673b(b) of this title, or

(B) if its determination under section 1673b(b) of this title was negative, an affirmative final determination by the administering authority under section 1673d(a) of this title,

and before the date of publication of the affirmative final determination by the Commission under section 1673d(b) of this title.

(2) Notice; hearing

If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 1677c of this title before determining the foreign market value and the United States price of the merchandise.

(3) Determinations to be basis of antidumping duty

The administering authority shall publish notice in the Federal Register of the results of its determination of foreign market value and United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) of this section applies.

(June 17, 1930, ch. 497, title VII, § 736, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 172.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673c, 1673d, 1673f, 1673h of this title.

§ 1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order

(a) Deposit of estimated antidumping duty under section 1673b(d)(2) of this title

If the amount of a cash deposit collected as security for an estimated antidumping duty under section 1673b(d)(2) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) disregarded, to the extent the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) Deposit of estimated antidumping duty under section 1673e(a)(3) of this title

If the amount of an estimated antidumping duty deposited under section 1673e(a)(3) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1673e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1673e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title.

(June 17, 1930, ch. 497, title VII, § 737, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 173.)

§ 1673g. Conditional payment of antidumping duty

(a) General rule

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) of this section and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the United States price of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this subtitle;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the exporter's sales price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 1673 of this title on that merchandise.

(June 17, 1930, ch. 497, title VII, § 738, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 174.)

§ 1673h. Duties of customs officers

In the case of all imported merchandise of a class or kind as to which the administering authority has published an antidumping duty order under section 1673e of this title under which entries have not been liquidated, the appropriate customs officer shall, by all reasonable ways and means and consistently with the provisions of this subtitle, ascertain and determine, or estimate, the foreign market value, the United States price, and any other information which the administering authority deems necessary for the purposes of administering this subtitle.

(June 17, 1930, ch. 497, title VII, § 739, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 174.)

§ 1673i. Antidumping duty treated as regular duty for drawback purposes

The antidumping duty imposed by section 1673 of this title shall be treated in all respects as a normal customs duty for the purpose of any law relating to the drawback of customs duties.

(June 17, 1930, ch. 497, title VII, § 740, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 175.)

PART III—REVIEW OF DETERMINATIONS

CODIFICATION

The heading "PART III—REVIEW OF DETERMINATIONS" read in the original "SUBTITLE C—REVIEW OF DETERMINATIONS" and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303 of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) Determination of antidumping duties

For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) Reviews upon information or request

(1) In general

Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 1671c or 1673c of this title or an affirmative determination made under section 1671c(h)(2), 1671d(a), 1671d(b), 1673c(h)(2), 1673d(a), or 1673d(b) of this title, which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 1671c(h)(2) or 1673c(h)(2) of this title, the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 1671c(c) or 1673c(c) of this title continues to eliminate completely the injurious effects of imports of the merchandise.

(2) Limitation on period for review

In the absence of good cause shown—

(A) the Commission may not review a determination under section 1671d(b) or 1673d(b) of this title, and

(B) the administering authority may not review a determination under section 1671d(a) or 1673d(a) of this title, or the suspension of an investigation suspended under section 1671c or 1673c of this title,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) Revocation of countervailing duty order or antidumping duty order

The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) Hearings

Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with section 1677c(b) of this title in connection with that review.

(e) Determination that basis for suspension no longer exists

If the determination of the Commission under the last sentence of subsection (b)(1) of this section is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 1671c(i) or 1673c(i) of this title, as if the agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(June 17, 1930, ch. 497, title VII, § 751, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 175.)

References in Text

The Antidumping Act, 1921, referred to in subsec. (a)(1), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

Effective Date

Part effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1516a, 1671c, 1673c of this title.

Part IV—General Provisions

Codification

The heading "PART IV—GENERAL PROVISIONS" read in the original "SUBTITLE D—GENERAL PROVISIONS" and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1677. Definitions; special rules

For purposes of this subtitle—

(1) Administering authority

The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this subtitle are transferred by law.

(2) Commission

The term "Commission" means the United States International Trade Commission.

(3) Country

The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) Industry

(A) In general

The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

(B) Related parties

When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

(C) Regional industries

In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) Product lines

The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

(5) Subsidy

The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 1303 of this title, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

(6) Net subsidy

For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) Material injury

(A) In general

The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) Volume and consequent impact

In making its determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.

(C) Evaluation of volume and of price effects

For purposes of subparagraph (B)—

(i) Volume

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) Impact on affected industry

In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(D) Special rules for agricultural products

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) Special rules

For purposes of this paragraph—

(i) Nature of subsidy

In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

(ii) Standard for determination

The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(8) Agreement on subsidies and countervailing measures; agreement

The terms "Agreement on Subsidies and Countervailing Measures" and "Agreement" mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2503(a) of this title.

(9) Interested party

The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this subtitle or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, and

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(10) Like product

The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.

(11) Affirmative determinations by divided commission

If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production

For purposes of part I of this subtitle, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) Exporter

For the purpose of determining United States price, the term "exporter" includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) Sold or, in the absence of sales, offered for sale

The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) Ordinary course of trade

The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

(16) Such or similar merchandise

The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of part II of this subtitle can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) Usual wholesale quantities

The term "usual wholesale quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(June 17, 1930, ch. 497, title VII, § 771, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 176.)

EFFECTIVE DATE

Part effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury under this subtitle were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, except that the Customs Service of the Department of the Treasury accept such deposits, bonds, or other security as deemed appropriate by the Secretary of Commerce, assess and collect such duties as directed by the Secretary of Commerce, and furnish such of its important records or copies thereof as requested by the Secretary incident to the functions transferred.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1337, 1514, 1516, 1516a, 1671a, 1671c, 1673a, 1673b, 1673c, 1677a, 1677b, 1677d of this title.

§ 1677a. United States price

(a) United States price

For purposes of this subtitle, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) Purchase price

For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) of this section shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) Exporter's sales price

For purposes of this section, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e) of this section.

(d) Adjustments to purchase price and exporter's sales price

The purchase price and the exporter's sales price shall be adjusted by being—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under part I of this subtitle or section 1303 of this title to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 1677(6)(C) of this title.

(e) Additional adjustments to exporter's sales price

For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

(1) commissions for selling in the United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

(June 17, 1930, ch. 497, title VII, § 772, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 181.)

§ 1677b. Foreign market value

(a) Determination; fictitious market; sales agencies

For purposes of this subtitle—

(1) In general

The foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this subtitle no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) Use of constructed value

If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e) of this section.

(3) Indirect sales and offers for sale

If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 1677(13) of this title, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(4) Other adjustments

In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandise described in paragraph (B) or (C) of section 1677(16) of this title is used in determining foreign market value,

then due allowance shall be made therefor.

(b) Sales at less than cost of production

Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a) of this section, the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

(c) State-controlled economies

If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices, determined in accordance with subsection (a) of this section, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either—

(A) for consumption in the home market of that country or countries, or

(B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e) of this section.

(d) Special rule for certain multinational corporations

Whenever, in the course of an investigation under this subtitle, the administering authority determines that—

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) Constructed value

(1) Determination

For the purposes of this subtitle, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(2) Transactions disregarded; best evidence

For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (3) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (3) of this section.

(3) Related parties

The persons referred to in paragraph (2) of this subsection are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(f) Authority to use sampling techniques and to disregard insignificant adjustments

For the purpose of determining foreign market value under this section, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(June 17, 1930, ch. 497, title VII, § 773, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 182.)

§ 1677c. Hearings

(a) Investigation hearings

The administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 1671d or 1673d of this title.

(b) Procedures

Any hearing required or permitted under this subtitle shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, or to section 702 of such title.

(June 17, 1930, ch. 497, title VII, § 774, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 186.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673e, 1675 of this title.

§ 1677d. Subsidy practices discovered during an investigation

If, in the course of an investigation under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise which is the subject of the investigation, or

(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 1677f(a)(1) of this title, if the practice appears to be a subsidy with respect to any other merchandise.

(June 17, 1930, ch. 497, title VII, § 775, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 186.)

§ 1677e. Verification of information

(a) General rule

Except with respect to information the verification of which is waived under section 1673b(b)(2) of this title, the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.

(b) Determinations to be made on best information available

In making their determinations under this subtitle, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

(June 17, 1930, ch. 497, title VII, § 776, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 186.)

§ 1677f. Access to information

(a) Information generally made available

(1) Public information function

There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports

The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of ex parte meetings between—

(A) interested parties or other persons providing factual information in connection with an investigation, and

(B) the person charged with making the determination, and any person charged with making a final recommendation to that person, in connection with that investigation.

The record of the ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) Summaries; nonconfidential submissions

The administering authority and the Commission may disclose—

(A) any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as confidential by the person submitting it.

(b) Confidential information

(1) Confidentiality maintained

Except as provided in subsection (a)(4)(A) and subsection (c) of this section, information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. The administering authority and the Commission may require that information for which confidential treatment is requested be accompanied by a non-confidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention.

(2) Unwarranted designation

If the administering authority of the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as confidential is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) Limited disclosure of certain confidential information under protective order

(1) Disclosure by administering authority or commission

(A) In general

Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

(B) Protective order

The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(2) Disclosure under court order

If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1) of this section,

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(June 17, 1930, ch. 497, title VII, § 777, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1516a of this title; title 28 section 1582.

§ 1677g. Interest on certain overpayments and underpayments

(a) General rule

Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after the date on which notice of an affirmative determination by the Commission under section 1671d(b) or 1673d(b) of this title with respect to such merchandise is published.

(b) Rate

The rate at which such interest is payable shall be 8 percent per annum, or, if higher, the rate in effect under section 6621 of title 26 on the date on which the rate or amount of the duty is finally determined.

(June 17, 1930, ch. 497, title VII, § 778, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 188.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671f, 1673f of this title.

CHAPTER 7—TRADE EXPANSION PROGRAM

SUBCHAPTER II—TRADE AGREEMENTS

PART I—GENERAL AUTHORITY

§ 1823. Waiver of limitation on decrease in duty and negotiation and staging requirements for dicyandiamide and limestone

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

PART IV—NATIONAL SECURITY

§ 1862. Safeguarding national security

[*See main edition for text of* (*a*)]

(b) Investigations by Secretary of Commerce to determine effects on national security of imports of articles; hearings; report to President; adjustment of imports

Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the

United States in such quantities or under such circumstances as to threaten to impair the national security.

[*See main edition for text of* (c)]

(d) Report on investigations by Secretary of Commerce; regulations

A report shall be made and published upon the disposition of each request, application, or motion under subsection (b) of this section. The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b) of this section.

(As amended 1979 Reorg. Plan No. 3, § 5(a)(1)(B), eff. Jan. 2, 1980, 44 F.R. 69274, 93 Stat. 1381.)

Codification

Provision of subsec. (b) of this section which required the Secretary to consult with the Secretary of Commerce in the course of an investigation was omitted in view of the transfer of all functions under this section to the Secretary of Commerce. See Transfer of Functions note set out below.

Transfer of Functions

"Secretary of Commerce" was substituted for "Secretary of the Treasury" in subsec. (b), in view of the transfer of all functions of the Secretary of the Treasury under this section to the Secretary of Commerce by Reorg. Plan No. 3 of 1979, § 5(a)(1)(B), 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Ex. Ord. No. 11703. Assigning Policy Development and Directing Functions Respecting Oil Import Control Program

Ex. Ord. No. 11703, Feb. 7, 1973, 38 F.R. 3579, as amended by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, provided:

[*See main edition for first par.; Secs. 1 and 2*]

Sec. 3. The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers, as members. The President may, from time to time, designate other officials to serve as members of the Committee. The Chairman may create subcommittees of the Committee to study and report to the Committee concerning specified subject matters.

[*See main edition for text of Secs. 4 to 6*]

Proc. No. 3279. Adjusting Imports of Petroleum and Petroleum Products Into the United States

Proc. No. 3279, Mar. 10, 1959, 24 F.R. 1781, as amended by Proc. No. 3290, Apr. 30, 1959, 24 F.R. 3527; Proc. No. 3328, Dec. 10, 1959, 24 F.R. 10133; Proc. No. 3386, Dec. 24, 1960, 25 F.R. 13945; Proc. No. 3389, Jan. 17, 1961, 26 F.R. 507; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Proc. No. 3509, Nov. 30, 1962, 27 F.R. 11985; Proc. No. 3531, Apr. 19, 1963, 28 F.R. 4077; Proc. No. 3541, June 12, 1963, 28 F.R. 5931; Proc. No. 3693, Dec. 10, 1965, 30 F.R. 15459; Proc. No. 3779, Apr. 10, 1967, 32 F.R. 5919; Proc. No. 3794, July 17, 1967, 32 F.R. 10547; Proc. No. 3820, Nov. 9, 1967, 32 F.R. 15701; Proc. No. 3823, Jan. 29, 1968, 33 F.R. 1171; Proc. No. 3969, Mar. 10, 1970, 35 F.R. 4321; Proc. No. 3990, June 17, 1970, 35 F.R. 10091; Proc. No. 4018, Oct. 16, 1970, 35 F.R. 16357; Proc. No. 4025, Dec. 22, 1970, 35 F.R. 19391; Proc. No. 4092, Nov. 5, 1971, 36 F.R. 21397; Proc. No. 4099, Dec. 20, 1971, 36 F.R. 24203; Proc. No. 4133, May 11, 1972, 37 F.R. 9543; Proc. No. 4156, Sept. 18, 1972, 37 F.R. 19115; Proc. No. 4175, Dec. 16, 1972, 37 F.R. 28043; Proc. No. 4178, Jan. 17, 1973, 38 F.R. 1719; Ex. Ord. No. 11703, Feb. 7, 1973, 38 F.R. 3579; Proc. No. 4202, Mar. 23, 1973, 38 F.R. 7977; Proc. No. 4210, Apr. 18, 1973, 38 F.R. 9645; Proc. No. 4227, June 19, 1973, 38 F.R. 16195; Ex. Ord. No. 11743, Oct. 23, 1973, 38 F.R. 29459; Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415; Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185; Proc. No. 4317, Sept. 27, 1974, 39 F.R. 35103; Proc. No. 4341, Jan. 23, 1975, 40 F.R. 3965; Proc. No. 4355, Mar. 4, 1975, 40 F.R. 10437; Proc. No. 4370, Apr. 30, 1975, 40 F.R. 19421; Proc. No. 4377, May 27, 1975, 40 F.R. 23429; Proc. No. 4412, Jan. 3, 1976, 41 F.R. 1037; Proc. No. 4543, Dec. 27, 1977, 42 F.R. 64849; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Proc. No. 4629, Dec. 8, 1978, 43 F.R. 58077; Proc. No. 4655, Apr. 6, 1979, 44 F.R. 21243; Proc. No. 4702, Nov. 12, 1979, 44 F.R. 65581, provided:

Sec. 1(a). In Districts I-IV, in District V, and in Puerto Rico, no crude oil, unfinished oils, or finished products may be entered for consumption or withdrawn from warehouse for consumption, except (1) by or for the account of a person to whom a license has been issued by the Secretary of Energy pursuant to an allocation made to such person by the Secretary of Energy in accordance with regulations issued by the Secretary of Energy, and such entries or withdrawals may be made only in accordance with the terms of such license, or (2) as authorized by the Secretary of Energy pursuant to paragraph (b) of this section, or (3) as to finished products, by or for the account of a department, establishment, or agency of the United States, which shall not be required to have such a license but which shall be subject to the provisions of paragraph (c) of this section, or (4) as provided in paragraph (c) of this section, or (5) as otherwise provided in this proclamation.

(b) The Secretary of Energy may, in his discretion, authorize entries, without allocation or license, of small quantities of crude oil, unfinished oils, or finished products.

(c) In Districts I-IV, District V, and Puerto Rico, no department, establishment, or agency of the United States shall without prior payment of the fees provided for in Section 3(a)(1)(i)-(ii) of this Proclamation, import finished products in excess of the respective allocations made to them by the Secretary. Such allocations shall, except as otherwise provided in this Proclamation, be within the maximum levels of imports established in Section 2 of this Proclamation.

(d) The Secretary of Energy may, by regulation, provide that no allocation or license shall be required in connection with the transportation to the United States by pipeline through a foreign country of crude oil, unfinished oils, or finished products produced in the customs territory of the United States or, in the event of commingling with foreign oils of like kind and qualities incidental to such transportation, of quantities equivalent to the quantities produced in and shipped from such customs territory.

(e) Notwithstanding any other provision of this Proclamation, no crude oil produced in Iran (except crude oil loaded aboard maritime vessels prior to November 13, 1979) or unfinished oil or finished products refined in possessions or free trade zones of the United States from such crude oil, may be entered into the customs territory of the United States.

Sec. 2(a). Except as otherwise provided in this Proclamation, the maximum level of imports, from sources other than Canada and Mexico which may be made without prior payment of the fees provided in Section 3(a)(1)(i)-(ii) of this Proclamation, of crude oil, unfinished oils, and finished products (other than residual fuel oil to be used as fuel) shall be:

(1) for Districts I-IV, 1,992,000 average barrels per day per year; *Provided*, That, in addition to the foregoing, there may be imported into District I an average of 50,000 barrels per day of No. 2 fuel oil, manufactured in the Western Hemisphere from crude oil

produced in the Western Hemisphere under allocations made by the Secretary of Energy, pursuant to regulations of the Secretary of Energy, to deepwater terminal operators who do not have crude oil import allocations into Districts I-V or Puerto Rico and who, in the allocation period beginning prior to January 1, 1973, had received, from the Secretary of Energy, an allocation of imports into District I of No. 2 fuel oil; *Provided Further,* That the Secretary of Energy may, by regulation, provide that a holder of an allocation for the importation of No. 2 fuel oil, may import crude oil produced in the Western Hemisphere in lieu of No. 2 fuel oil, barrel for barrel, and exchange such crude oil for No. 2 fuel oil. Whenever the Chairman of the Oil Policy Committee, after consultation with the committee, finds that, because of supply, price, or other considerations, the requirement that No. 2 fuel oil be manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere is unduly restricting the availability of such oil for importation into District I and is not required for the national security, he shall so advise the Secretary of Energy who shall then suspend such requirement for such period of time as he shall deem compatible with the purposes of this proclamation.

[*See main edition for text of* (*2*) *to* (*6*); (*b*)]

(c)(1) Except as otherwise provided in this Proclamation, the maximum levels of imports from Canada of crude oil and unfinished oils to which license fees under section 3(a)(1)(i)-(ii) are not applicable shall be:

(i) for Districts I-IV, 960,000 average barrels per day per year; *Provided,* That, the Secretary of Energy may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil and unfinished oils, which may be imported from Canada so long as such increase is, in his judgment, consonant with the purposes of this Proclamation.

(ii) for District V, 280,000 average barrels per day per year; *Provided,* That, the Secretary of Energy may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil and unfinished oils which may be imported from Canada, so long as such increase is, in his judgment, consonant with the purposes of this Proclamation.

[*See main edition for text of* (*2*); (*d*) *and* (*e*)]

SEC. 3(a)(1). Effective February 1, 1975, the Administrator shall issue allocations and licenses subject to fees, on imports of crude oil, unfinished oils, and finished products. Such licenses shall require, among other appropriate provisions, that:

(i) with respect to imports of crude oil (other than that imported by the Department of Energy, or by another person or agency of the Federal Government acting on behalf of the Department, for the Strategic Petroleum Reserve Program) and natural gas products over and above the levels of imports established in Section 2 of the Proclamation, such fees shall be $0.00 per barrel for the period April 1, 1979 through June 30, 1979. Effective July 1, 1979 such fees shall be $0.21 per barrel unless the Secretary makes the finding prescribed in paragraph 3(a)(1)(viii) in which case the fees shall remain at the $0.00 level;

(ii) with respect to imports of motor gasoline, unfinished oils, and all other finished products (except ethane, propane, butanes, asphalt and finished products imported by the Department of Energy, or another person or agency of the Federal Government acting on behalf of the Department of Energy, for the Strategic Petroleum Reserve Program), over and above the levels of imports established in Section 2 of this Proclamation, such fees shall be $0.00 per barrel for the period April 1, 1979 through June 30, 1979. Effective July 1, 1979, such fees shall be $0.63 per barrel unless the Secretary makes the finding prescribed in paragraph 3(a)(1)(viii) in which case the fees shall remain at the $0.00 level;

(iii) With respect to the fees imposed pursuant to paragraph 3(a)(1)(i)-(ii), the amount of such fees shall be reduced, in such manner as may be provided by the Secretary, by an amount equal to any applicable duties; *Provided,* that where the applicable duty on a barrel of crude oil, unfinished oil, or finished product entered on or after Sunday, December 17, 1978, exceeds the amount of the fee paid with respect to that barrel, the reduction shall not exceed the amount of the fee nor may any excess duty be used to reduce the fee on any other barrel;

(iv) With respect to licenses issued pursuant to paragraph 3(a)(1)(i)-(ii), the Secretary:

(A) With respect to imports of crude oil, to the extent that such imports are refined into products or incorporated into petrochemicals exported from the United States and its territories and possessions, shall refund any fee collected; *Provided,* that the Secretary may limit the quantity of exports to which refunds under this provision may be applicable;

[*See main edition for text of* (*B*) *and* (*C*)]

(v) The Secretary shall by regulation reduce the fees payable by importers pursuant to paragraphs 3(a)(1)(i)-(ii) with respect to crude oil, unfinished oils, and finished products imported into Puerto Rico, or imported into Districts I-V and shipped to Puerto Rico, with or without further processing, and not shipped to Districts I-V, as crude oil, unfinished oils, or finished products, by the amount of any excise tax or other levy imposed and collected by the Government of Puerto Rico on such materials, *Provided,* that refunds from or reductions in such excise tax or other levy are authorized in the same manner as are authorized with respect to payments prescribed by paragraphs 3(a)(1)(i)-(ii), *Provided further,* that with respect to shipments to Puerto Rico from Districts I-V such shipments shall be deemed attributable to imported crude.

[*See main edition for text of* (*vi*) *and* (*vii*)]

(viii) with respect to the fees imposed pursuant to paragraphs 3(a)(1)(i)-(ii), the Secretary may defer the imposition of either the $0.21 or $0.63 fee for a period, not to exceed six months, with respect to any type of crude oil, unfinished oil, or finished product for which the Secretary finds that imposition of the fees would not be in accordance with the purposes of this Proclamation. Reimposition of the fees may be deferred for one additional period, not to exceed six months, upon a similar finding.

(2) License fees payable for imports of motor gasoline or other finished products or unfinished oils, manufactured in American Samoa, Guam, or the Virgin Islands or in a foreign trade zone and transported to the Customs territory of the United States by overland means or by vessel or vessels under United States registry, shall be at the rate applicable to the feedstock from which such motor gasoline or other finished product or unfinished oil was manufactured: *Provided,* that such rate shall apply also in cases where the holder of the license establishes to the satisfaction of the Secretary that he made a good faith attempt to arrange shipment by vessel under United States registry and that no such vessel was available at reasonable rates for the purpose at the time this shipment was made.

(3) The Secretary is authorized to refund or reduce fees, whether in whole or in part, (i) where the licensee failed to use, wholly or in part, the license issued to him, (ii) where refunds or reductions, whether in whole or in part, are ordered pursuant to Section 5, (iii) where refunds or reductions, whether in whole or in part, are called for by reason of a person having exported finished products or petrochemicals, (iv) where crude oil imported by virtue of a license for which a fee was paid has been manufactured into asphalt, (v) for payment to the importer of record of sums refunded pursuant to clauses (iii), (iv), (v) and (vii) of para-

graph 3(a)(1), as amended by this Proclamation, (vi) where the importer of record participates in an exchange in accordance with the next to last sentence of paragraph 4(b)(1), (vii) where refund of a license fee is called for by reason of the same having been improperly charged.

[*See main edition for text of* (*4*)]

(5) In order to ensure that refiners located in territories of the United States and in foreign trade zones are treated not less favorably than other United States refiners, the Secretary shall by regulation determine at what point crude oil, unfinished oils and finished products shipped into United States territories and foreign trade zones shall become subject to the fees imposed pursuant to paragraphs 3(a)(1)(i)-(ii).

(b)(1) Applications for allocations and licenses for imports subject to fee under this section shall be accompanied by the applicant's certified check, or a cashier's check, payable to the order of the Treasurer of the United States in the amount chargeable pursuant to this section, or by a bond with a surety on the list of acceptable sureties on Federal bonds maintained by the Bureau of Government Financial Operations, Department of the Treasury, in a sum not less than the amount chargeable pursuant to this section, conditioned upon payment of such amount to the order of the Treasurer of the United States, by the last day of the month following the month in which such imports were released from customs custody or entered or withdrawn from warehouse, whichever occurs first, or within such other period as the Secretary shall specify. In the event that such bond is terminated or the face value of the bond is reduced below the outstanding liability of licenses issued pursuant to the bond, the Secretary shall immediately revoke all licenses issued pursuant to the bond. Except as to a department, establishment or agency of the United States, applications not accompanied by a certified check, cashier's check, or bond in the amount required shall not be considered. Payment of fees by or for the account of a department, establishment, or agency of the United States shall be accomplished by transfers, as appropriate, from appropriation accounts available to such department, establishment, or agency, to the suspense account provided by subparagraph (1) of paragraph (c) of this section.

(2) With respect to allocations and licenses issued prior to June 1, 1975, for which a bond was not required or with respect to which a bond was required in amounts less than the full amount of the fees imposed pursuant to this Proclamation, the Secretary may, by regulation, provide for such bonding procedures as he deems necessary.

(c)(1) All monies received by the Secretary under the terms of paragraph (b) of this section shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary for the payment of refundable license fees. Balances remaining in such suspense account and not required to be reserved for payments hereinabove provided shall be deposited at the end of each fiscal year in the Treasury of the United States and credited to miscellaneous receipts.

(2) Refunds pursuant to subparagraph (1) of paragraph (c) of this section shall be made without interest.

SEC. 4(a). The Secretary of Energy is hereby authorized to issue regulations for the purpose of implementing this proclamation.

(b)(1) With respect to the allocation of imports of crude oil and unfinished oils into Districts I-IV and into District V, such regulations shall provide for a fair and equitable distribution of allocations of imports for which license fees under section 3(a)(1)(i)-(ii) are not applicable among eligible persons having refinery capacity in relation to refinery inputs or in relation to storage capacities of such allocation holders. The Secretary may, by regulation, also provide for the making of allocations of imports for which license fees under section 3(a)(1)(i)-(ii) are not applicable, of crude oil and unfinished oils into Districts I-IV and into District V to persons having petrochemical plants in these districts in relation to the outputs of such plants or in relation to inputs to such plants. Provision may be made in the regulations for the making of such allocations on the basis of graduated scales. Notwithstanding the levels prescribed in section 2 of this proclamation, the Secretary may also by regulation make such provisions as he deems consonant with the objectives of this proclamation for the making of allocations of imports of crude oil and unfinished oils to which the license fee is not applicable into Districts I-IV and into District V to persons who manufacture from crude oil and unfinished oils and who export finished products and petrochemicals, subject to such designations as the Secretary may make. Notwithstanding the levels established in section 2 of this proclamation the Secretary may make allocations to which license fees under section 3(a)(1)(i)-(ii) shall not be applicable to new, expanded, or reactivated refinery capacity and petrochemical plants for a period of five years from the date such facility comes on stream. Such allocations shall not exceed 75 percent of estimated refinery capacity or the percentage of petrochemical plant capacity applicable. Notwithstanding the levels established in section 2 of this proclamation, the Secretary may make allocations to which license fees under paragraph 3(a)(1)(i)-(ii) shall not be applicable, with respect to crude oil or unfinished oils imported from Canada in exchange for crude oil, unfinished oils, or finished products produced in the United States or entered into United States customs territory and exported to Canada. In respect of the territories of American Samoa, Guam, the Virgin Islands, and foreign trade zones, the Secretary may make such regulations as he deems consonant with the purposes of this proclamation to the end that persons having refineries and petrochemical plants located in such territories or zones shall participate to the fullest practicable extent, upon terms not less favorable, so far as possible, than those accorded to persons in the Customs territory of the United States in all appropriate aspects of the programs authorized by this proclamation.

[*See main edition for text of* (*2*)]

(3) Except for (i) crude oil or unfinished oils imported under license or licenses for which a fee has been charged, (ii) crude oil sold, bought, or exchanged in order to comply with other Department of Energy regulations, or (iii) crude oil or unfinished oils imported pursuant to specific relief granted pursuant to section 5, such regulations shall require that imported crude oil and unfinished oils be processed in the licensee's refinery or petrochemical plant, except that imported crude oil or unfinished oils other than Canadian imports may be exchanged for domestic crude or unfinished oils if such exchanges are otherwise lawful, are effected on a current basis and reported in advance to the Secretary, and if the domestic crude or unfinished oils are processed in the licensee's refinery or petrochemical plant. Canadian imports may only be exchanged for other Canadian imports, in which case the Canadian imports obtained in the exchange must be processed in the licensee's own facility.

(4) With respect to the allocation of imports of finished products (other than residual fuel oil to be used as fuel) in respect of which license fees under section 3(a)(1)(i)-(ii) are not applicable into Puerto Rico, such regulations shall provide, to the extent possible for a fair and equitable distribution of imports of such finished products among persons who were importers of such finished products into Puerto Rico during all or part of the calendar year 1958, or such higher level as the Secretary of Energy may have determined to be required to meet demand in Puerto Rico for finished products that would not otherwise have been met, during the calendar year 1973.

(5) With respect to the allocation of imports to which license fees under section 3(a)(1)(i)-(ii) are not

applicable of residual fuel oil to be used as fuel in Puerto Rico, such regulations shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel among persons who were importers of that product into Puerto Rico during all or part of the calendar year 1958. In addition, the Secretary of Energy by regulation may, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel, the maximum sulphur content of which is acceptable to the Secretary of Energy, (i) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who in a base period to be established by the Secretary of Energy had inputs of that product to deepwater terminals located in the respective districts or Puerto Rico and (ii) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who have throughout agreements (warehouse agreements) with deepwater terminal operators.

(6) With respect to the allocation of imports into District I of residual fuel oil to be used as fuel, the Secretary shall provide until June 30, 1979, for the fair and equitable distribution of such allocation among all persons desiring to import residual fuel oil into District I. For the period beginning July 1, 1979, the Secretary shall provide that the distribution of such allocation shall be based upon a person's actual average calendar day imports in the six calendar months preceding May 1, 1979.

(c) Such regulations may provide for the revocation or suspension by the Secretary of Energy of any allocation or license on grounds relating to the national security, or the violation of the terms of this proclamation, or of any regulation, allocation, or license issued pursuant to this proclamation. In exercising this authority the Secretary will consult with the Secretaries of State, Treasury, and Defense, as appropriate.

(d) Such regulations may provide for allocation periods of other than one year's duration; *provided*, that the applicable average barrel per day level of imports not subject to the payment of fees provided in Section 2 of this Proclamation is not exceeded on the average in any such period established.

(e) Notwithstanding the levels established in Section 2 of this Proclamation, such regulations may provide for the suspension of the issuance of licenses not subject to the payment of fees with respect to any type of crude oil, unfinished oil, or finished product for any period in which a fee of $0.00, as provided in Section 3 of this Proclamation, is in effect.

Sec. 5(a). The Secretary of Energy is authorized to provide for the establishment and operation of an Appeals Board to consider petitions by persons affected by the regulations issued pursuant to this proclamation.

(b) The Appeals Board may be empowered, subject to the general direction of the Chairman of the Oil Policy Committee, without regard to the limits of the maximum levels of imports established in section 2 of this proclamation: (1) to reverse or modify on grounds of error actions taken by the Secretary of Energy under implementing regulations; (2) to modify, on the grounds of exceptional hardship, any allocation made to any person under such regulations; (3) to grant allocations of imports of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations; (4) to grant allocations of imports of finished products on grounds of exceptional hardship; (5) to grant allocations of imports of crude oil, unfinished oils, and finished products to independent refiners or established independent marketers who are experiencing exceptional hardship or in emergencies in order to assure, insofar as practicable, that adequate supplies are available; (6) to review the revocation or suspension of any allocation or license; (7) to review the denial by the Secretary of Energy of refunds of license fees, whether in whole or in part, theretofore paid by a person; and (8) to grant refunds, in whole, or in part, of license fees paid by persons to whom licenses were issued for imports which they subsequently became entitled to make under allocations made by the Board. Except with respect to its function to review applications for allocations of imports to which license fees are applicable, licenses issued pursuant to Board allocations shall be from the fees established in section 3(a)(i)–(ii) exempt. Any allocations granted by the Board, however, shall be subject to payment of the fees established in section 3(a)(1)(iii).

(c) The Secretary of Energy may modify or alter the composition of the Appeals Board or abolish the Board and establish such other appellate procedures as he deems appropriate.

(d) The authority granted by this section shall expire on April 30, 1980.

Sec. 6. Persons who apply for allocations of crude oil, unfinished oils, or finished products, persons to whom such allocations have been made, and persons who hold such allocations shall furnish to the Secretary of Energy such information and shall make such reports as he may require, by regulations or otherwise, in the discharge of his responsibilities under this proclamation.

Sec. 7. The Secretary shall provide policy direction, coordination, and surveillance of the mandatory oil import program, and shall, from time to time, in consultation with the Secretaries of State and the Treasury and other federal agencies as appropriate, review the status of imports of petroleum and its primary derivatives in respect to the national security. In this connection, he shall inform the President of any circumstances which might indicate the need for further Presidential action under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) as amended.

Sec. 8. Annually, beginning May 1, 1974, the maximum levels of imports subject to allocation and license, to which license fees under section 3(a)(1)(i)–(ii) shall not be applicable, except allocations made and licenses issued by reason of new, expanded, or reactivated refinery capacity and petrochemical plants in Districts I–IV and District V allocations and licenses issued to persons who manufacture in such Districts finished products or petrochemicals from crude oil and unfinished oils and who export finished products or petrochemicals, subject to such designations as the Secretary of Energy may make, shall be reduced as follows:

[*See main edition for second to eighth pars.*]

For the period from November 1, 1978 through June 30, 1979, the allocation of residual fuel oil to be used as fuel in District I shall not be subject to the reductions set forth in this Section.

[*See main edition for text of Sec. 9*]

Sec. 10. The Secretary of Energy may delegate, and provide for successive redelegation of, the authority conferred upon him by this proclamation. All departments and agencies of the Executive Branch of the Government shall cooperate with and assist the Secretary of Energy in carrying out the purposes of this proclamation.

Sec. 11. As used in this proclamation:

[*See main edition for text of* (*a*) *to* (*k*)]

(*l*) The term "imports", when applied to crude oil other than that produced in Iran, includes both entry for consumption and withdrawal from warehouse for consumption, but excludes unfinished oil and finished products processed in the United States territories and foreign trade zones from crude oil produced in the United States.

(m) The term "Secretary" means the Secretary of Energy, or his delegate.

[*See main edition for text of Sec. 12 and last par.*]

[The Tariff Schedules of the United States are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.]

PART V—ADMINISTRATIVE PROVISIONS

§ 1872. Interagency trade organization

(a) Establishment; composition; meetings; participation by other agencies

The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this subchapter and sections 2251, 2252, and 2253 of this title. Such organization shall, in addition to the United States Trade Representative, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) Duties

In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 2251(d) of this title,

(3) advise the President of the results of hearings held pursuant to section 2412(b)(2) of this title, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) Use of resources of agencies; procedures and committees

The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 2412(b)(2) of this title, and for the carrying out of other functions assigned to the organization pursuant to this section.

(As amended Pub. L. 96-39, title IX, § 902(c), July 26, 1979, 93 Stat. 300; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

AMENDMENTS

1979—Subsecs. (b)(3), (c). Pub. L. 96-39 substituted "section 2412(b)(2) of this title" for "section 2411(c) and (d) of this title".

CHANGE OF NAME

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsec. (a), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 903 of Pub. L. 96-39, set out as an Effective Date note under section 2411 of this title.

TRANSFER OF FUNCTIONS FROM EAST-WEST FOREIGN TRADE BOARD

The East-West Foreign Trade Board, which was established by Pub. L. 93-618, title IV, § 411, Jan. 3, 1975, 88 Stat. 2065, and classified to section 2441 of this title, was abolished by Reorg. Plan No. 3 of 1979, § 6, 44 Stat. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, and the functions of the Board under subsecs. (a) and (b) of section 411 of Pub. L. 93-618 transferred to the interagency organization established under this section by section 5(e) of Reorg. Plan No. 3 of 1979. See section 2441 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2171, 2512, 2553, 2554 of this title.

CHAPTER 8—AUTOMOTIVE PRODUCTS

SUBCHAPTER II—BASIC AUTHORITIES

§ 2011. Implementation of the Agreement

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

SUBCHAPTER III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

§ 2022. Omitted

CODIFICATION

Section, Pub. L. 89-283, title III, § 302, Oct. 21, 1965, 79 Stat. 1018; Pub. L. 95-598, title III, § 316, Nov. 6, 1978, 92 Stat. 2678, which set forth procedures for Presidential certification of petitions filed by firms or group of workers for determination of eligibility to apply for adjustment assistance after the 90th day after Oct. 21, 1965, and before July 1, 1968, has been omitted from this Code as obsolete. See section 2021 of this title for general authority for filing of petition.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 2033. Applicability of antidumping provisions and antitrust laws

Nothing contained in this chapter shall be construed to affect or modify the provisions of subtitle B of title VII of the Tariff Act of 1930 [19 U.S.C. 1673 et seq.] or of any of the antitrust laws as designated in section 12 of title 15.

(As amended Pub. L. 96-39, title I, § 106(b)(2), July 26, 1979, 93 Stat. 193.)

REFERENCES IN TEXT

The Tariff Act of 1930, as amended, referred to in subsec. (a), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Subtitle B of title VII of the Tariff Act of 1930 is classified generally to part II of subtitle IV (§ 1673 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

Amendments

1979—Pub. L. 96-39 substituted "subtitle B of title VII of the Tariff Act of 1930" for "the Anti-Dumping Act, 1921,".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39, effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

CHAPTER 10—CUSTOMS SERVICE

Sec.
2075. Customs Service appropriations authorization [New].

§ 2075. Customs Service appropriations authorization

For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for the United States Customs Service only such sums as may hereafter be authorized by law.

(Pub. L. 95-410, title III, § 301, Oct. 3, 1978, 92 Stat. 905.)

CHAPTER 12—TRADE ACT OF 1974

SUBCHAPTER III—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

Sec.
2411. Determinations and action by President [New].
    (a) Determinations requiring action.
    (b) Other action.
    (c) Presidential procedures.
    (d) Special provisions.
2412. Petitions for action by President [New].
    (a) Filing of petition with Special Representative.
    (b) Determinations regarding petitions.
2413. Consultation upon initiation of investigation [New].
2414. Recommendations by the Special Representative [New].
    (a) Recommendations.
    (b) Consultation before recommendation.
2415. Requests for information [New].
    (a) In general.
    (b) If information not available.
2416. Administration [New].

Chapter Referred to in Other Sections

This chapter is referred to in sections 1352, 2502 of this title.

§ 2101. Short title

References to Other Laws Deemed References to Trade Act of 1974

Section 602(f) of Pub. L. 93-618, as amended by Pub. L. 96-39, title XI, § 1106(h)(3), July 26, 1979, 93 Stat. 313, provided that: "All provisions of law (other than this Act [this chapter], the Trade Expansion Act of 1962 [chapter 7 of this title], and the Trade Agreements Extension Act of 1951 [see Short Title note under section 1360 of this title]), in effect after the date of enactment of this Act [Jan. 3, 1975], referring to section 350 of the Tariff Act of 1930 [section 1351 of this title], to that section as amended, to the Act entitled 'An Act to amend the Tariff Act of 1930,' approved June 12, 1934 [enacting sections 1352, 1353, and 1354 and amending section 1351 of this title], to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued pursuant to this Act."

SUBCHAPTER I—NEGOTIATING AND OTHER AUTHORITY

Part 1—Rates of Duty and Other Trade Barriers

§ 2111. Basic authority for trade agreements

References in Text

The Tariff Schedules of the United States, referred to in subsec. (c)(1), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Change of Name

The Office of the Special Representative for Trade Negotiations was redesignated the Office of the United States Trade Representative, and Special Representative for Trade Negotiations was redesignated the United States Trade Representative by Reorg. Plan No. 3 of 1979, § 1(a), (b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Reorganizing and Restructuring of International Trade Functions of United States Government

Pub. L. 96-39, title XI, § 1109, July 26, 1979, 93 Stat. 413, provided that:

"(a) In general.—The President shall submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive Branch of the United States Government. In developing his proposal, the President shall consider, among other possibilities, strengthening the coordination and functional responsibilities of the Office of the Special Representative for Trade Negotiations [now Office of United States Trade Representative, see Change of Name note above] to include, among other things, representation of the United States in all matters before the General Agreement on Tariffs and Trade, the establishment of a board of trade with a coordinating mechanism in the Executive Office of the President, and the establishment of a Department of International Trade and Investment. The recommendations of the President, as embodied in such proposal, should include a monitoring and enforcement structure which would insure protection of United States rights under agreements negotiated pursuant to the Tokyo Round of the Multilateral Trade Negotiations and all other elements of multilateral and bilateral international trade agreements. The proposal should result in an upgrading of commercial programs and commercial attachés overseas to assure that United States trading partners are meeting their trade agreement obligations, particularly those entered into under such agreements, including the tendering procedures of the Agreement on Government Procurement.

"(b) Congressional action.—In order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, the appropriate committee of each House of the Congress shall give the proposal by the President immediate consideration and shall make its best efforts to take final committee action to reorganize and restructure the international trade functions of the United States Government by November 10, 1979."

Study of Export Trade Policy

Pub. L. 96-39, title XI, § 1110, July 26, 1979, 93 Stat. 314, provided that:

"(a) REVIEW OF EXPORT PROMOTION AND DISINCENTIVES.—The President shall review all export promotion functions of the executive branch and potential programmatic and regulatory disincentives to exports, and shall submit to the Congress a report of that review not later than July 15, 1980. The report should make particular reference to those activities which enhance the role of small and medium-sized businesses in export trade.

"(b) CONDITIONS OF COMPETITION STUDY.—Not later than July 15, 1980, the President shall submit to the Congress a study of the factors bearing on the competitive posture of United States producers and the policies and programs required to strengthen the relative competitive position of the United States in world markets."

EX. ORD. NO. 11846. ADMINISTRATION OF TRADE AGREEMENTS PROGRAM

Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, as amended by Ex. Ord. No. 11894, Jan. 3, 1976, 41 F.R. 1041; Ex. Ord. No. 11947, Nov. 8, 1976, 41 F.R. 49799; Ex. Ord. No. 12102, Nov. 17, 1978, 43 F.R. 54197; Ex Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, provided:

[*See main edition for text of first par. and Sec. 1*]

SEC. 2. *The Special Representative for Trade Negotiations* [now United States Trade Representative, see Change of Name note above].

(a) The Special Representative for Trade Negotiations [now United States Trade Representative], hereinafter referred to as the Special Representative [now Trade Representative], in addition to the functions conferred upon him by the Act [this chapter], including Section 141 thereof [section 2171 of this title], and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

(c) The Special Representative [now Trade Representative] shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by Section 163(a) of the Act [section 2213(a) of this title]. At the request of the Special Representative [now Trade Representative], other agencies shall assist in the preparation of that report.

(d) The Special Representative [now Trade Representative], except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative [now Trade Representative] shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act [section 2431 et seq. of this title], including those established or delegated by this Order, the Special Representative [now Trade Representative] shall also consult with the East-West Foreign Trade Board [abolished].

(f) The Special Representative [now Trade Representative] shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order No. 11030, as amended [set out as a note under section 1505 of Title 44, Public Printing and Documents] except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative [now Trade Representative], and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative [now Trade Representative] shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

SEC. 3. *The Trade Policy Committee.*

(a) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

[*See main edition for text of* (*b*)]

(c) The Special Representative [now Trade Representative] or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under Section 242(b)(2) of the Trade Expansion Act of 1962, as amended [section 1872(b)(2) of this title], the Committee shall, through the Special Representative [now Trade Representative], request the advice of the Adjustment Assistance Coordinating Committee, established by Section 281 of the Act [section 2392 of this title].

(e), (f) [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

[*See main edition for text of* (*g*)]

SEC. 4. *Trade Negotiations Under Title I of the Act.*

(a) The functions of the President under Section 102 of the Act [section 2112 of this title] concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative [now Trade Representative].

(b) The Special Representative [now Trade Representative], after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative [now Trade Representative] the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under Section 131(a) of the Act [section 2151(a) of this title], with respect to publishing and furnishing to the International Trade Commission lists of articles, are delegated to the Special Representative [now Trade Representative]. The functions of the President under Section 131(c) of the Act [section 2151(c) of this title] with respect to advice of the International Trade Commission and under Section 132 of the Act [section 2152 of this title] with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative [now Trade Representative]. The functions of the President under Section 133 of the Act [section 2153 of this title] with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative [now Trade Representative], who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under Section 135 of the Act [section 2155 of this title] with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App.), except that of reporting annually to Congress, which are applicable to advisory committees under the Act [this chapter] are delegated to the Special Representative [now Trade Representative]. In establishing and organizing general policy advisory committees or sector advisory committees under Section 135(c) of the Act [section 2155(c) of this title], the Special Representative [now Trade Representative] shall act through the Secretaries of Commerce, Labor, and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to Sections 601(3) and (4) of the Act [section 2481(3) and (4) of this title] are hereby delegated to the Special Representative [now Trade Representative]. The International Trade Commission is requested to advise the Special Representative [now Trade Representative] with respect to determining such ad valorem amounts and equivalents. The Special Representative [now Trade Representative] shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under Section 131 of the Act [section 2151 of this title], and other advice or reports by the International Trade Commission to the President or the Special Representative [now Trade Representative], the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative [now Trade Representative].

(g) All reports, findings, advice, determinations, hearing transcripts, briefs, and information which, under the terms of the Act [this chapter], the International Trade Commission is required to furnish to the President shall be transmitted to the President through the Special Representative [now Trade Representative].

SEC. 5. *Import Relief and Market Disruption.*

(a) The Special Representative [now Trade Representative] is authorized to request from the International Trade Commission the information specified in Sections 202(d) and 203(i)(1) and (2) of the Act [sections 2252(d) and 2253(i)(1) and (2) of this title].

[*See main edition for text of* (*b*) *and* (*c*)]

SEC. 6. [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

SEC. 7. *East-West Foreign Trade Board* [abolished].

(a) In accordance with Section 411 of the Act [section 2441 of this title], there is hereby established the East-West Foreign Trade Board [abolished], hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

[*See main edition for text of* (*1*) *to* (*5*)]

(6) The Special Representative for Trade Negotiations [now United States Trade Representative].

(7) The Director of the Office of Management and Budget.

(8) The Chairman of the Council of Economic Advisers.

(9) The President of the Export-Import Bank of the United States.

(10) [Deleted by Ex. Ord. No. 12102.]

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

[*See main edition for text of* (*b*) *to* (*e*)]

SEC. 8. *Generalized System of Preferences.*

(a) The Special Representative [now Trade Representative], in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act [section 2461 et seq. of this title].

(b) The Committee, through the Special Representative [now Trade Representative], shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

(c) The Committee, through the Special Representative [now Trade Representative], shall perform the functions of the President specified in Section 503(a) of the Act [section 2463(a) of this title], with respect to publishing and furnishing to the International Trade Commission lists of articles that may be considered for designation as eligible articles for purposes of the Generalized System of Preferences.

(d) The Committee, through the Special Representative [now Trade Representative], to the extent necessary to determine the applicability of the provisions of Section 504(d) of the Act [section 2464(d) of this title] to any eligible article, shall perform the functions of the President under Section 332(g) of the Tariff Act of 1930, as amended [section 1332(g) of this title], with respect to requests for investigations by, and reports from, the International Trade Commission.

[*See main edition for text of Sec. 9*]

PROC. NO. 4707. CARRYING OUT THE GENEVA (1979) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSES

Proc. No. 4707, Dec. 11, 1979, 44 F.R. 72348, provided:

1. Pursuant to Section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)), I determined that certain existing duties and other import restrictions of the United States and of foreign countries were unduly burdening and restricting the foreign trade of the United States and that one or more of the purposes stated in Section 2 of the Trade Act of 1974 (19 U.S.C. 2102) would be promoted by entering into the trade agreements identified in the third and fourth recitals of this proclamation.

2. Sections 131, 132, 133, 134, 135, and 161(b) of the Trade Act of 1974 (19 U.S.C. 2151, 2152, 2153, 2154, 2155, and 2211(b)) and Section 4(c) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971-1975 Comp. 974) [set out as a note above], have been complied with.

3. Pursuant to Section 101(a)(1) of the Trade Act of 1974 (19 U.S.C. 2111(a)(1)), I, through my duly empowered representative, (1) on July 11, 1979, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (61 Stat. (pts. 5 and 6)), as amended (the General Agreement), with countries seeking to accede to the General Agreement, and the European Economic Community, which agreement consists of the Geneva (1979) Protocol to the General Agreement, including a schedule of United States concessions annexed thereto (hereinafter referred to as "Schedule XX (Geneva-1979)"), a copy of which Geneva (1979) Protocol (including Schedule XX (Geneva-1979) annexed thereto) is annexed to this proclamation as Part 1 of Annex I [set out below], (2) on November 18, 1978, entered into a trade agreement with the Hungarian People's Republic, including a schedule of United States concessions annexed thereto, a copy of which agreement, and schedule, is annexed to this proclamation as Part 2 of Annex I [set out below], (3) on October 31, 1979, entered into a trade agreement with the United Mexican States, which agreement consists of an exchange of letters, one enclosing a schedule of United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 3 of Annex I [set out below], and (4) on March 2, 1979, entered into a trade agreement with the Socialist Republic of Romania, which agreement

consists of an exchange of letters, one enclosing a schedule of United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 4 of Annex I [set out below], and on October 24, 1979, the American Institute in Taiwan entered into a trade agreement with the Coordination Council for North American Affairs (see the Taiwan Relations Act, Sections 4(b)(1), 6(a)(1), and 10(a), 93 Stat. 15, 17, and 18 [22 U.S.C. 3303(b)(1), 3305(a)(1), and 3309(a)], E.O. 12143, sections 1-203 and 1-204, 44 Fed. Reg. 37191) [22 U.S.C. 3301 note], which agreement consists of an exchange of letters, one enclosing a schedule of the United States concessions, a copy of which exchange of letters, including such enclosed schedule, is annexed to this proclamation as Part 5 of Annex I [set out below].

4. Pursuant to Section 102 of the Trade Act of 1974 (19 U.S.C. 2112), I have determined that barriers to (and other distortions of) international trade were unduly burdening and restricting the foreign trade of the United States, and, through the Special Representative for Trade Negotiations [now United States Trade Representative, see Change of Name note above] (the Special Representative [now Trade Representative]), I have consulted with the appropriate Committees of the Congress, notified the House of Representatives and the Senate of my intention to enter into the agreements identified in Section 2(c) of the Trade Agreements Act of 1979 (93 Stat. 148) [19 U.S.C. 2503(c)], transmitted to the Congress copies of such agreements (a copy of one of which agreements, with the Hungarian People's Republic, is annexed to this proclamation as Part 6 of Annex I [set out below]), together with a draft of an implementing bill and a statement of administrative action, and such implementing bill, approving the agreements and the proposed administrative action, has been enacted into law (Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(a)]).

5. (a) Pursuant to Section 502 of the Trade Agreements Act of 1979 (93 Stat. 251) [Pub. L. 96-39, July 26, 1979], I have determined that appropriate concessions have been received from foreign countries under trade agreements entered into under Title I of the Trade Act of 1974 (19 U.S.C. 2111 et seq.);

(b) Pursuant to Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267), I have determined that duty-free treatment for certain articles now classified in the items of the Tariff Schedules of the United States (19 U.S.C. 1202) (TSUS) [see Publication of Tariff Schedules note under section 1202 of this title] listed in, and certified pursuant to, Section 601(a)(2) of that Act (93 Stat. 267), will provide treatment comparable to that provided by foreign countries under the Agreement on Trade in Civil Aircraft;

(c) Pursuant to Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), I have determined, after providing interested parties an opportunity to comment, that each article identified in Annex IV to this proclamation [see note below] is not import sensitive;

(d) Pursuant to Section 855(a) of the Trade Agreements Act of 1979 (93 Stat. 295), I have determined that adequate reciprocal concessions have been received, under trade agreements entered into under the Trade Act of 1974 [this chapter], for the application of the rate of duty appearing in rate column numbered 1 on January 1, 1979, for the comparable item on a proof gallon basis in the case of alcoholic beverages classified in all items in subpart D of part 12 of schedule 1 of the TSUS, except items 168.09, 168.12, 168.43, 168.77, 168.81, 168.87, and 168.95 [see Publication of Tariff Schedules note under section 1202 of this title];

(e) Pursuant to Section 2(b)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(b)(2)(A)], I have determined that obligations substantially the same as those applicable to developing countries set forth in the agreements listed in Section 2(c)(1), (2), (3), (4), and (5) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)(1), (2), (3), (4), and (5)] will be observed in Taiwan.

6. Each modification of existing duty proclaimed herein which provides with respect to an article for a decrease in duty below the limitation specified in Sections 101(b)(1) or 109(a) of the Trade Act of 1974 (19 U.S.C. 2111(b)(1) or 2119(a)), and each modification of any other import restriction or tariff provision so proclaimed is authorized by one or more of the following provisions or statutes:

(a) Section 101(b)(2) of the Trade Act of 1974 (19 U.S.C. 2111(b)(2)), by virtue of the fact that the rate of duty existing on January 1, 1975, applicable to the article was not more than 5 percent ad valorem (or ad valorem equivalent);

(b) Section 109(b) of the Trade Act of 1974 (19 U.S.C. 2119(b)), by virtue of the fact that I have determined, pursuant to that section, that the decrease authorized by that section will simplify the computation of the amount of duty imposed with respect to the article;

(c) Sections 503(a)(2)(A) and 503(a)(3) to (6) of the Trade Agreements Act of 1979 (93 Stat. 251 and 252) [Pub. L. 96-39, July 26, 1979] by virtue of the fact that they permit departures from the staging provisions of Section 109(a) of the Trade Act of 1974 (19 U.S.C. 2119(a));

(d) Sections 502(a), 855(a), and 601(a) of the Trade Agreements Act of 1979 (93 Stat. 251, 295, and 267) by virtue of the authority in such sections for specified concessions based on reciprocity, but in the case of the last such section only after the conditions for acceptance of the Agreement on Trade in Civil Aircraft, identified in Section 2(c)(10) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)(10)], are fulfilled;

(e) Sections 505 through 513, inclusive, of the Trade Agreements Act of 1979 (93 Stat. 252-257) by virtue of the fact that they permit exceeding the limitations specified in Sections 101 or 109 of the Trade Act of 1974 (19 U.S.C. 2111 or 2119);

(f) Section 255 of the Trade Expansion Act of 1962 (19 U.S.C. 1885) by virtue of the fact that it permits termination of proclamations issued pursuant to authority contained in that act;

(g) Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(a)] by virtue of its approval of the agreements identified in Section 2(c) of that Act (93 Stat. 148) [19 U.S.C. 2503(c)], and

(h) Section 304(a)(3)(J) of the Tariff Act of 1930 (19 U.S.C. 1304(a)(3)(J)) and Section 602(f) of the Trade Act of 1974 (19 U.S.C. 2101 note), by virtue of the fact that I have found that the effectiveness of the proviso to Section 304(a)(3)(J) [19 U.S.C. 1304(a)(3)(J)] with respect to the marking of articles provided for in headnote 2 of part 1 of schedule 2 of the TSUS [see Publication of Tariff Schedules note under section 1202 of this title] is required or appropriate to carry out the first agreement identified in the third recital of this proclamation.

7. In the case of each decrease in duty, including those of the type specified in clause (a) or (b) of the sixth recital of this proclamation, which involves the determination of the ad valorem equivalent of a specific or compound rate of duty, and in the case of each modification in the form of an import duty, the United States International Trade Commission determined, pursuant to Section 601(4) of the Trade Act of 1974 (19 U.S.C. 2481(4)) in accordance with Section 4(e) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971-1975 Comp. 973) [set out as a note above], and at my direction, the ad valorem equivalent of the specific or compound rate, on the basis of the value of imports of the article concerned during a period determined by it to be representative, utilizing, to the extent practicable, the standards of valuation contained in Sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402) applicable to the article during such representative period.

8. Pursuant to the Trade Act of 1974 [this chapter] and the Trade Agreements Act of 1979 [see 19 U.S.C.

2501], I determine that the modification or continuance of existing duties or other import restrictions or the continuance of existing duty-free or excise treatment hereinafter proclaimed is required or appropriate to carry out the trade agreements identified in the third recital of this proclamation or one or more of the trade agreements identified in Section 2(c) of the Trade Agreements Act of 1979 (93 Stat. 148) [19 U.S.C. 7503(c)].

9. Following unsatisfactory negotiations with the European Economic Community under Articles XXIV:6 and XXVIII of the General Agreement regarding the maintenance by the European Economic Community of unreasonable import restrictions upon imports of poultry from the United States, the President, by Proclamation 3564 of December 4, 1963 (77 Stat. 1035), suspended certain United States tariff concessions; as a result of the reciprocal concessions contained in the Geneva (1979) Protocol to the General Agreement, I determine that the termination of such suspension of tariff concessions contained in Proclamation 3564 (except those applicable to automobile trucks valued at $1,000 or more (provided for in TSUS item 692.02) [see Publication of Tariff Schedules note under section 1202 of this title]) is required to carry out the General Agreement.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to Title I and Section 604 of the Trade Act of 1974 [this subchapter and 19 U.S.C. 2483], Section 2 [19 U.S.C. 2503], and Titles V, VI, and VIII of the Trade Agreements Act of 1979 [Pub. L. 96-39, July 26, 1979], Section 255 of the Trade Expansion Act of 1962 [19 U.S.C. 1885], and Section 301 of Title 3 of the United States Code, do proclaim that:

(1) At the close of December 31, 1979, the suspension of tariff concessions contained in Proclamation 3564 (except those applicable to automobile trucks valued at $1,000 or more (provided for in TSUS item 692.02) [see Publication of Tariff Schedules note under section 1202 of this title]) shall terminate.

(2) The amendment to Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) provided for in Section 601(a)(3) of the Trade Agreements Act of 1979 (93 Stat. 268) shall be effective with respect to entries made under Section 466 on and after the date designated by the President under paragraph 5(b) of this proclamation.

(3) The rate of duty applicable to each item as to which the determination has been made in recital 5(d) is the rate of duty appearing in rate column numbered 1 on January 1, 1979, for the comparable item on a proof gallon basis or such rate as reduced under Section 101 of the Trade Act of 1974 (19 U.S.C. 2111).

(4) Subject to the provisions of the General Agreement, of the Geneva (1979) Protocol, of other agreements supplemental to the General Agreement, of the other agreements identified in recitals 3 and 4, and of United States law (including but not limited to provisions for more favorable treatment), the modification or continuance of existing duties or other import restrictions and the continuance of existing duty-free or excise treatment provided for in Schedule XX (Geneva-1979) (except those provided for in the items listed in Parts 1C, 1D, 2D, 2E, 2K, 3C, 3D, 4C, and 4D of Annex I to Schedule XX which are required to implement the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, and those provided for in Section 1, Chapter 4, Unit C, Note 2 (cheese quotas), and in Section 1, Chapter 10, Unit B, note 2 (chocolate quotas), all of which will be the subject of one or more separate proclamations), in the agreements identified in the third and fourth recitals of this proclamation, and in trade agreements legislation, shall become effective on or after January 1, 1980, as provided for herein.

(5) To this end—

(a) Except as provided for in subparagraph (b), the modifications to the TSUS made by Annex II, Section A of Annex III, and Sections B(1) through (4) of Annex IV of this proclamation [see note below] shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates specified in those annexes;

(b) The modifications provided for in Section A of Annex II to this proclamation [see note below] which are authorized by Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267) shall apply to articles entered, or withdrawn from warehouse, for consumption on and after the date designated by the President when he determines that the requirements of Section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) [19 U.S.C. 2503(b)] have been met with respect to the Agreement on Trade in Civil Aircraft;

(c) The Special Representative [now Trade Representative] shall make any determinations relevant to the designation of the effective dates of the modifications of the TSUS made by Sections B through G of Annex III, and Sections B(5) through (10) of Annex IV of this proclamation [see note below], and shall publish in the Federal Register the effective date with respect to each of the modifications made by these sections; such modifications shall apply to articles entered, or withdrawn from warehouse, for consumption on and after such effective date;

(d) The modifications to the TSUS made by Section C of Annex IV to this proclamation [see note below], relating to special treatment for the least developed developing countries (LDDC's), shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates as provided for in Section B of Annex IV [see note below]; whenever the rate of duty specified in the column numbered 1 for any TSUS item is reduced to the same level as the corresponding rate of duty specified in the column entitled "LDDC" for such item, the rate of duty in the column entitled "LDDC" shall be deleted from the TSUS, and when the duty rates for all such items in Annex IV [see note below] have been deleted, the modifications to the TSUS made by Section C of Annex IV to this proclamation [see note below] shall be deleted;

(e) Section A of Annex IV [see note below] shall become effective on January 1, 1980.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

ANNEX I

TEXTS OF AGREEMENTS IDENTIFIED IN THE THIRD AND FOURTH RECITALS OF THIS PROCLAMATION [1]

Part 1	Geneva (1979) Protocol to the General Agreement on Tariffs and Trade (Including Schedules of Concessions)
Part 2	Trade Agreement with the People's Republic of Hungary Entered Into on November 18, 1979
Part 3	Trade Agreement with the United Mexican States Entered Into on October 31, 1979
Part 4	Trade Agreement with the Socialist Republic of Romania Entered Into on March 2, 1979

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[1] Not printed in the Federal Register. The text of the Geneva (1979) Protocol to the General Agreement in part 1 of Annex I has been printed by the Contracting Parties to the General Agreement on Tariffs and Trade in four volumes entitled Geneva (1979) Protocol to the General Agreements on Tariffs and Trade. The Agreement with the Hungarian People's Republic in part 6 of Annex I has been printed in House Document 96-153, vol. 1, p. 703. The general provisions of all the agreements in parts 1 to 6 of annex I, but not schedules of concessions by other parties, will be printed in the Customs Bulletin. The texts of all these agreements will be printed in Treaties and Other International Acts Series, and in the bound volumes of United States Treaties and Other International Agreements.

Part 5 Trade Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs Entered Into on October 24, 1979
Part 6 Agreement with the Hungarian People's Republic Entered Into on June 13, 1979

ANNEXES II TO IV

Annexes II to IV of Proclamation 4707, which amended the Tariff Schedules of the United States, are not set out under this section in view of the discontinuation of publication of the Tariff Schedules in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title. The complete text of annexes II to IV of Proclamation 4707 is set out at 44 F.R. 72354 to 72563. For Tariff Schedules as amended by annexes II to IV of Proclamation 4707, see the Tariff Schedules of the United States Annotated, a current version of which is maintained and published periodically by the United States International Trade Commission and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2113, 2114, 2115, 2116, 2119, 2133, 2134, 2155, 2462, 2463 of this title.

§ 2112. Nontariff barriers to and other distortions of trade

[See main edition for text of (a)]

(b) Presidential determinations prerequisite to entry into trade agreements

Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this chapter will be promoted thereby, the President, during the 13-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

[See main edition for text of (c) and (d)]

(e) Steps prerequisite to entry into force of trade agreements

Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

[See main edition for text of (1)]

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

[See main edition for text of (A), (B), (3); (f) and (g)]

(As amended Pub. L. 96-39, title XI, §§ 1101, 1106(c)(1), July 26, 1979, 93 Stat. 307, 311.)

REFERENCES IN TEXT

For repeal of section 1402 of this title, referred to in subsec. (g)(1), see Repeal of Section note set out under section 1402 of this title.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-39, § 1101, substituted "13-year period" for "5-year period".

Subsec. (e)(2). Pub. L. 96-39, § 1106(c)(1), substituted "copy of the final legal text of such agreement" for "copy of such agreement".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (b) of this section by section 1101 of Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Section 1106(c)(1) of Pub. L. 96-39 provided in part that the amendment of subsec. (e)(2) of this section by section 1106(c)(1) of Pub. L. 96-39 shall apply with respect to trade agreements submitted to the Congress under this section after July 26, 1979.

PRESIDENTIAL DETERMINATION REGARDING MULTILATERAL TRADE NEGOTIATIONS

For provisions relating to Presidential determination regarding multilateral trade negotiations and Presidential determination regarding acceptance and application of certain international trade agreements, see note set out under section 2503 of this Title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 2113 to 2118, 2131, 2136, 2151, 2155, 2191, 2194, 2462, 2503, 2504 of this title.

§ 2114. Sector negotiating objectives

[See main edition for text of (a) and (b)]

(c) Identification of appropriate product sectors of manufacturing

For the purposes of this section and section 2155 of this title, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 2155 of this title and after consultation with interested private organizations, identify appropriate product sectors of manufacturing.

[See main edition for text of (d)]

(As amended 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsec. (c), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2119. Staging requirements and rounding authority

[See main edition for text of (a) and (b)]

(c) Ten-year period for commencement of reductions in rates of duty

[See main edition for text of (1)]

(2) If any part of a reduction takes effect, then any time thereafter during which any part

of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2) of this section, and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

(As amended Pub. L. 96-39, title XI, § 1106(c)(3), July 26, 1979, 93 Stat. 312.)

Amendments

1979—Subsec. (c)(2). Pub. L. 96-39 substituted "any part of the reduction" for "such part of the reduction".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Part 2—Other Authority

§ 2131. Steps to be taken toward GATT revision

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Changes in Federal law through legislation implementing trade agreements

If the President enters into a trade agreement which establishes rules or procedures, including those set forth in subsection (a) of this section, promoting the development of an open, nondiscriminatory, and fair world economic system and if the implementation of such agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress. Such trade agreement may be entered into under section 2112 of this title. Nothing in this section shall be construed as prior approval of any legislation necessary to implement a trade agreement entered into under this section.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 96-39, title XI, § 1106(c)(2), July 26, 1979, 93 Stat. 311.)

Amendments

1979—Subsec. (c). Pub. L. 96-39 substituted "Such trade agreement may be entered into under section 2112 of this title" for "Such trade agreement may be submitted to the Congress for approval in accordance with the procedures of section 2191 of this title".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

§ 2135. Termination and withdrawal authority

References in Text

The Tariff Schedules of the United States, referred to in subsec. (c), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Tariff Reductions Under Trade Agreements Act of 1979

Pub. L. 96-39, title V, § 502(b), July 26, 1979, 93 Stat. 251, provided that: "For purposes of section 125 (19 U.S.C. 2135) of the Trade Act of 1974 the amendments made under sections 508, 511, 512, and 513 [amending items 135.41, 135.42, 750.26, 750.27, 750.28, 870.45, 905.10, and 905.11 of the Tariff Schedules of the United States. See Publication of Tariff Schedules note under section 1202 of this title] not including the rates of duty appearing in rate column numbered 2, if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter], of benefit to foreign countries or instrumentalities."

Pub. L. 96-39, title VI, § 601(b), July 26, 1979, 93 Stat. 268, provided that: "For purposes of section 125 of the Trade Act of 1974 [this section], the amendments made under subsection (a), if any [amending the Tariff Schedules of the United States with regard to civil aircraft (see Publication of Tariff Schedules note under section 1202), and amending section 1466 of this title], shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter] of benefit to foreign countries or instrumentalities."

Rates of duty proclaimed under section 855(a) of Pub. L. 96-39 (covering spirits, spiritous beverages, and beverage preparations) to be deemed, for purposes of this section, a trade agreement obligation which is of benefit to a foreign country or instrumentality, and, in the case of any item affected by such a proclamation, the last sentence of subsec. (c) of this section to be applied as if it authorized (in addition to any increase authorized therein) an increase up to the rate of duty for such item set forth in rate column numbered 1 of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title) as amended by section 852 of Pub. L. 96-39, see section 855(b) of Pub. L. 96-39.

Review of International Trade in Alcoholic Beverages

Pub. L. 96-39, title VIII, § 854, July 26, 1979, 93 Stat. 294, provided that:

"(a) Review.—The President shall review foreign tariff and nontariff barriers affecting United States exports of alcoholic beverages. Not later than January 1, 1982, the President shall report to the Congress the results of his review.

"(b) Withdrawal of concessions.—If, as the result of his review under subsection (a), the President determines that a foreign country or instrumentality has not implemented concessions to the United States affecting alcoholic beverages which were negotiated in trade agreements entered into before January 3, 1980, under the authority of title I of the Trade Act of 1974 [this subchapter], the President shall withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality under section 125 of the Trade Act of 1974 (19 U.S.C. 2135).

"(c) Further negotiations to remove barriers.—If, as the result of his review under subsection (a), the President determines that foreign tariff or nontariff barriers are unduly burdening or restricting the United States exports of alcoholic beverages, he shall enter into negotiations under the Trade Act of 1974 [this chapter] to eliminate or reduce such barriers."

Section Referred to in Other Sections

This section is referred to in section 2581 of this title.

§ 2136. Reciprocal nondiscrimination treatment

Section Referred to in Other Sections

This section is referred to in sections 2253, 2503, 2518 of this title.

PART 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

§ 2152. Advice from Executive Departments and other sources

Before any trade agreement is entered into under part 1 of this subchapter or section 2133 or 2134 of this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate.

(As amended 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2155. Advice from private sector

(a) Information and advice relating to trade agreements and other matters

The President shall seek information and advice from representative elements of the private sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 2111 or 2112 of this title, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.

(b) Advisory Committee for Trade Negotiations

(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on matters referred to in subsection (a) of this section. The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

(2) The Committee shall meet at the call of the United States Trade Representative. The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

(3) The United States Trade Representative shall make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) General policy, sectoral, or functional advisory committees

(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a) of this section. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees the United States Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competition, the necessity for reasonable limits on the number of such advisory committees, the necessity that each committee be reasonably limited in size, and that, in the case of each sectoral committee, the product lines covered by each committee be reasonably related.

(d) Policy and technical advice and information and other advice

Committees established under subsection (c) of this section shall meet at the call of the United States Trade Representative and the Secretary of Agriculture, Commerce, or Labor, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a) of this section.

(e) Meeting of advisory committees at conclusion of negotiations for trade agreements

The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, and each sector or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this chapter, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and the report of the appropriate sector or functional area committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act shall apply—

(1) to the Advisory Committee for Trade Negotiations established pursuant to subsection (b) of this section; and

(2) to all other advisory committees which may be established pursuant to subsection (c) of this section; except that the meetings of advisory committees established under subsection (c) of this section shall be exempt from the requirements of subsections (a) and (b) of section 10 and section 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section.

(g) Trade secrets and confidential commercial, financial, or other information

(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the United States Trade Representative, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 2211(a) of this title or are designated by the chairman of either such committee under section 2211(b)(2) of this title, and members of the staff of either such committee designated by the chairman under section 2211(b)(2) of this title,

for use in connection with negotiation of matters referred to in subsection (a) of this section.

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c) of this section, in connection with matters referred to in subsection (a) of this section, shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c) of this section, shall not be disclosed other than in accordance with rules issued by the United States Trade Representative and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c) of this section. Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a) of this section.

(h) Staff, information, personnel, and administrative services and assistance to advisory committees

The United States Trade Representative, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) of this section as such committees may reasonably require to carry out their activities.

(i) Consultation with advisory committees; adoption of procedures; nonacceptance of committee advice or recommendations

It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) of this section on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments, and (2) overall negotiating objectives and positions of the United States and other parties with respect to matters referred to in subsection (a) of this section. The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees but the United States Trade Representative shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 2213 of this title, a report by the United States Trade Representative on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) Private organizations or groups

In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g) of this section, confidential basis by private organizations or groups, representing labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any matters referred to in subsection (a) of this section.

(k) Direct participation in negotiations by private individuals not authorized; information, consultation, participation of committee members and appropriate parties in international meetings; restrictions

Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a) of this section. To the maximum extent practicable, the members of the committees established under subsections (b) and (c) of this section, and other appropriate parties, shall be informed and consulted before and during any such negotiations and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate, but may not speak or negotiate for the United States.

(*l*) Advisory committees established by Department of Agriculture

The provisions of title XVIII of the Food and Agriculture Act of 1977 [7 U.S.C. 2281 et seq.] shall not apply to an advisory committee established under subsection (c) of this section.

(As amended Pub. L. 96-39, title XI, § 1103, July 26, 1979, 93 Stat. 308; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

REFERENCES IN TEXT

The Food and Agriculture Act of 1977, referred to in subsec. (*l*), is Pub. L. 95-113, Sept. 29, 1977, 91 Stat. 913, as amended. Title XVIII of the Food and Agriculture Act of 1977 is classified generally to chapter 55A (§ 2281 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of Title 7 and Tables.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-39, § 1103(1), (2), deleted phrase ", in accordance with the provisions of this section," following "President" and required the seeking of information and advice respecting operation of a trade agreement once entered into and respecting other matters arising in connection with the administration of trade policy of the United States.

Subsec. (b)(1). Pub. L. 96-39, § 1103(3), substituted "matters referred to in subsection (a) of this section" for "any trade agreement referred to in section 2111 or 2112 of this title".

Subsec. (b)(2). Pub. L. 96-39, § 1103(4), substituted requirement that the members elect the Chairman of the Committee from among its membership for provision designating the Special Representative as Chairman and deleted provision for termination of the Committee upon submission of its report to Congress as soon as practical after the end of the period which ends 5 years after Jan. 3, 1975.

Subsec. (c)(1). Pub. L. 96-39, § 1103(5), inserted a comma following "initiative", included references to "services", and substituted "general policy advice on matters referred to in subsection (a) of this section" for "general policy advice on any trade agreement referred to in section 2111 or 2112 of this title", "Special Representative for Trade Negotiations" for "President acting through the Special Representative for Trade Negotiations" and "or Agriculture" for "and Agriculture".

Subsec. (c)(2). Pub. L. 96-39, § 1103(6)-(9), substituted "The President shall establish such sectoral or functional advisory committees as may be appropriate" for "The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 2111 or 2112 of this title" and "Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned" for "Such committees shall, so far as practicable be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned" and "the Special Representative for Trade Negotiations" for "the President, acting through the Special Representative for Trade Negotiations", struck out "product sector" preceding "advisory committees", and inserted ", in the case of each sectoral committee," before "the product lines".

Subsec. (d). Pub. L. 96-39, § 1103(10), required committee meetings to be also summoned at joint instance of Secretary of Agriculture, Commerce, or Labor, as appropriate, previously required to be called before and during trade negotiations, deleted item (1) through (3) designation for "policy advice", "technical advice" and "advice on other factors", deleted "on negotiations" and "on negotiations on particular products both domestic and foreign" following "policy advice" and "technical advice and information" and substituted "factors relevant to the matters referred to in subsection (a) of this section" for "factors relevant to positions of the United States in trade negotiations."

Subsec. (e). Pub. L. 96-39, § 1103(11)-(14), redesignated par. (1) as entire provision, and in provision as so redesignated, substituted "each sector or functional advisory committee, if the sector or area" for "each sector advisory committee, if the sector", "appropriate sector or functional area" for "appropriate sector", and "within the sector or within the functional area" for "within the sector" and struck out par. (2), which required a report to Congress by the Advisory Committee for Trade Negotiations by each policy advisory committee, and, each sector advisory committee as soon as practicable at end of the period ending 5 years after Jan. 3, 1975, including advisory opinions of the respective committees as to how the trade agreements serve the economic interests of United States and how provision is made for equity and reciprocity within the sector.

Subsec. (f)(2). Pub. L. 96-39, § 1103(15)(A), (B), substituted "committees" for "groups" and "with respect to matters referred to in subsection (a) of this section" for "on the negotiation of any trade agreement".

Subsec. (g). Pub. L. 96-39, § 1103(16), (17)(A), (B), substituted in par. (1)(A) "matters referred to in subsection (a) of this section" for "a trade agreement referred to in section 2111 or 2112 of this title", in par. (1)(B) "matters referred to in subsection (a) of this section" for "trade negotiations", and in par. (2) "matters referred to in subsection (a) of this title" for "proposed trade agreements".

Subsec. (i). Pub. L. 96-39, § 1103(18)(A)-(C), struck out in provision preceding cl. (1) ", both during preparation for negotiations and actual negotiations" following "basis" and in cl. (1) "arising in preparation for or in the course of such negotiations" following "developments" and substituted in cl. (2) "with respect to matters referred to in subsection (a) of this section" for "to the negotiations".

Subsec. (j). Pub. L. 96-39, § 1103(19), substituted "matters referred to in subsection (a) of this section" for "trade agreement referred to in section 2111 or 2112 of this title".

Subsec. (k). Pub. L. 96-39, § 1103(19), (20), substituted "matters referred to in subsection (a) of this section" for "trade agreement referred to in section 2111 or 2112 of this title" and provided for information to and consultations with committee members and appropriate parties and participation in international meetings without becoming spokesmen or negotiators for the United States.

Subsec. (*l*). Pub. L. 96-39, § 1103(21), added subsec. (*l*).

Change of Name

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsecs. (b)(2), (3), (c) to (e), (g)(1)(A)(i), (2), (h), and (i), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2114, 2413, 2414, 2512, 2514, 2547 of this title.

PART 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

§ 2171. Structure, functions, powers, and personnel

(a) Establishment within Executive Office of the President

There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the "Office").

(b) United States Trade Representative; Deputy United States Trade Representatives

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office two Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(c) Duties of Trade Representative and Deputy Trade Representatives

(1) The United States Trade Representative shall—

[*See main edition for text of* (*A*) *to* (*F*)]

(2) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(d) Powers of United States Trade Representative

The United States Trade Representative may, for the purpose of carrying out his functions under this section—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

[*See main edition for text of* (*6*) *and* (*7*)]

(e) Use of other Federal agencies

The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(f) Authorization of appropriations

There are authorized to be appropriated to the Office of United States Trade Representative such amounts as may be necessary for the purpose of carrying out its functions for fiscal year 1976 and each fiscal year thereafter any part of which is within the 5-year period beginning on January 3, 1975.

(g) Abolition of Office as established by Executive Order; transfer of assets, liabilities, contracts, property, records, and unexpended balances and funds

[*See main edition for text of* (*1*)]

(2) The assets, liabilities, contracts, property, and records and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, or available to such Office are transferred to the Office of United States Trade Representative established under subsection (a) of this section.

[*See main edition for text of* (*h*)]

(As amended 1979 Reorg. Plan No. 3, § 1(a), (b)(1), (c), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"Office of the United States Trade Representative", "United States Trade Representative", "Deputy United States Trade Representatives", "Deputy Trade Representative", and "Deputy United States Trade Representative" were substituted for "Office of the Special Representative for Trade Negotiations", "Special Representative for Trade Negotiations", "Deputy Special Representatives for Trade Negotiations", "Deputy Special Representative", and "Deputy Special Representative for Trade Negotiations", respectively, in subsecs. (a), (b), (c)(1), (2), (d), (d)(5), (e), (f), and (g)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(a), (b)(1), (c), 44 F.R. 69273, 69274, 93 Stat. 1381, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes below.

REORGANIZATION PLAN NO. 3 OF 1979

44 F.R. 69273, 93 Stat. 1381

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

Section 1. Office of the United States Trade Representative

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the "Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979 [19 U.S.C. 2503(c)]; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930 [19 U.S.C. 1303, 1671 et seq.];

(E) bilateral trade and commodity issues, including East-West trade matters; and

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

Sec. 2. Department of Commerce

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the "Department") a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule [5 U.S.C. 5315], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule [5 U.S.C. 5314], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall receive compensation at the rate payable for Level IV of the Executive Schedule [5 U.S.C. 5315], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

Sec. 3. Export-Import Bank of the United States

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

Sec. 4. Overseas Private Investment Corporation

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

Sec. 5. Transfer of Functions

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 771(1) [19 U.S.C. 1677(1)]) of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 et seq.), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph:

(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979 [19 U.S.C. 1516a note];

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)) [19 U.S.C. 1516a].

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 et seq.) and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441 (a) and (b)).

Sec. 6. Abolition

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

Sec. 7. Responsibility of the Secretary of State

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade-related matters.

Sec. 8. Incidental Transfers; Interim Officers

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

Sec. 9. Effective Date

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

[Pursuant to Ex. Ord. 12175, Dec. 7, 1979, 44 F.R. 70705, section 2(b)(1) of this Reorg. Plan is effective Dec. 7, 1979.]

[Pursuant to Ex. Ord. 12188, Jan. 2, 1980, 45 F.R. 989, sections 1, 2(a), (b)(2), (c), (d), 3, 4, 5(a), (b)(2), (c)–(e), 6-8 of this Reorg. Plan are effective Jan. 2, 1980, and section 5(b)(1) of this Reorg. Plan is effective Apr. 1, 1980.]

Message of the President

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1979, to consolidate trade functions of the United States Government. I am acting under the authority vested in me by the Reorganization Act of 1977, chapter 9 of title 5 of the United States Code, and pursuant to section 1109 of the Trade Agreements Act of 1979 [19 U.S.C. 2111 note], which directs that I transmit to the Congress a proposal to restructure the international trade functions of the Executive branch.

The goal of this reorganization is to improve the capacity of the Government to strengthen the export performance of United States industry and to assure fair international trade practices, taking into account the interests of all elements of our economy.

Recent developments, which have raised concern about the vitality of our international trade performance, have focused much attention on the way our trade machinery is organized. These developments include our negative trade balance, increasing dependence upon foreign oil, and international pressures on the dollar. New challenges, such as implementation of the Multilateral Trade Negotiation (MTN) agreements and trade with non-market economies, will further test our Government trade organization.

We must be prepared to apply domestically the MTN codes on procurement, subsidies, standards, and customs valuation. We also must monitor major implementation measures abroad, reporting back to American business on important developments and, where necessary, raising questions internationally about foreign implementation. MTN will work—will open new markets for U.S. labor, farmers, and business—only if we have adequate procedures for aggressively monitoring and enforcing it. We intend to meet our obligations, and we expect others to do the same.

The trade machinery we now have cannot do this job effectively. Although the Special Trade Representative (STR) takes the lead role in administering the trade agreements program, many issues are handled elsewhere and no agency has across-the-board leadership in trade. Aside from the Trade Representative and the Export-Import Bank, trade is not the primary concern of any Executive branch agency where trade functions are located. The current arrangements lack a central authority capable of planning a coherent trade strategy and assuring its vigorous implementation.

This reorganization is designed to correct such deficiencies and to prepare us for strong enforcement of the MTN codes. It aims to improve our export promotion activities so that United States exporters can take full advantage of trade opportunities in foreign markets. It provides for the timely and efficient administration of our unfair trade laws. It also establishes an efficient mechanism for shaping an effective, comprehensive United States trade policy.

To achieve these objectives, I propose to place policy coordination and negotiation—those international trade functions that most require comprehensiveness, influence, and Government-wide perspective—in the Executive Office of the President. I propose to place operational and implementation responsibilities, which are staff-intensive, in line departments that have the requisite resources and knowledge of the major sectors of our economy to handle them. I have concluded that building our trade structure on STR and Commerce, respectively, best satisfies these considerations.

I propose to enhance STR, to be renamed the Office of the United States Trade Representative, by centralizing in it international trade policy development, coordination and negotiation functions. The Commerce Department will become the focus of non-agricultural operational trade responsibilities by adding to its existing duties those for commercial representation abroad, antidumping and countervailing duty cases, the non-agricultural aspects of MTN implementation, national security investigations, and embargoes.

THE UNITED STATES TRADE REPRESENTATIVE

The Trade Representative, with the advice of the Trade Policy Committee, will be responsible for developing and coordinating our international trade and direct investment policy, including the following areas:

Import remedies.—The Trade Representative will exercise policy oversight of the application of import remedies, analyze long-term trends in import remedy cases and recommend any necessary legislative changes. For antidumping and countervailing duty matters, such coordination, to the extent legally permissible, will be directed toward the establishment of new precedents, negotiation of assurances, and coordination with other trade matters, rather than case-by-case fact finding and determinations.

East-West trade policy.—The Trade Representative will have lead responsibility for East-West trade negotiations and will coordinate East-West trade policy. The Trade Policy Committee will assume the responsibilities of the East-West Foreign Trade Board.

International investment policy.—The Trade Representative will have the policy lead regarding issues of direct foreign investment in the United States, direct investment by Americans abroad, operations of multinational enterprises, and multilateral agreements on international investment, insofar as such issues relate to international trade.

International commodity policy.—The Trade Representative will assume responsibility for commodity negotiations and also will coordinate commodity policy.

Energy trade.—While the Departments of Energy and State will continue to share responsibility for international energy issues, the Trade Representative will coordinate energy trade matters. The Department of Energy will become a member of the TPC.

Export-expansion policy.—To ensure a vigorous and coordinated Government-wide export expansion effort, policy oversight of our export expansion activities will be the responsibility of the Trade Representative.

The Trade Representative will have the lead role in bilateral and multilateral trade, commodity, and direct investment negotiations. The Trade Representative will represent the United States in General Agreement on Tariffs and Trade (GATT) matters. Since the GATT will be the principal international forum for implementing and interpreting the MTN agreements and since GATT meetings, including committee and working group meetings, occur almost continuously, the Trade Representative will have a limited number of permanent staff in Geneva. In some cases, it may be necessary to assign a small number of USTR staff abroad to assist in oversight of MTN enforcement. In this event, appropriate positions will be authorized. In recognition of the responsibility of the Secretary of State regarding our foreign policy, the activities of overseas personnel of the Trade Representative and the Commerce Department will be fully coordinated with other elements of our diplomatic missions.

In addition to his role with regard to GATT matters, the Trade Representative will have the lead responsibility for trade and commodity matters considered in the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) when such matters are the primary issues under negotiation. Because of the Secretary of State's foreign policy responsibilities, and the responsibilities of the Director of the International Development Cooperation Agency as the President's principal advisor on development, the Trade Representative will exercise his OECD and UNCTAD responsibilities in close cooperation with these officials.

To ensure that all trade negotiations are handled consistently and that our negotiating leverage is employed to the maximum, the Trade Representative will manage the negotiation of particular issues. Where appropriate, the Trade Representative may delegate responsibility for negotiations to other agencies with expertise on the issues under consideration. He will coordinate the operational aspects of negotiations through a Trade Negotiating Committee, chaired by the Trade Representative and including the Departments of Commerce, State, Treasury, Agriculture and Labor.

The Trade Representative will be concerned not only with ongoing negotiations and coordination of specific, immediate issues, but also—very importantly—with the development of long-term United States trade strategies and policies. He will oversee implementation of the MTN agreements, and will advise the President on the effects of other Government policies (e.g., antitrust, taxation) on U.S. trade. In order to participate more fully in oversight of international investment and export financing activities, the Trade Representative will become a member of the National Advisory Council on International Monetary and Financial Policies and the Boards of the Export-Import Bank and the Overseas Private Investment Corporation.

In performing these functions, the Trade Representative will act as the principal trade spokesman of the President. To assure that our trade policies take into account the broadest range of perspectives, the Trade Representative will consult with the Trade Policy Committee, whose mandate and membership will be expanded. The Trade Representative will, as appropriate, invite agencies such as the Export-Import Bank and the Overseas Private Investment Corporation to participate in TPC meetings in addition to the permanent TPC members. When different departmental views on trade matters exist within the TPC as will be the case from time to time in this complex policy area, I will expect the Trade Representative to resolve policy disagreements in his best judgment, subject to appeal to the President.

THE DEPARTMENT OF COMMERCE

The Department of Commerce, under this proposal, will become the focal point of operational responsibilities in the non-agricultural trade area. My reorganization plan will transfer to the Commerce Department important responsibilities for administration of countervailing and antidumping matters, foreign commercial representation, and MTN implementation support. Consolidating these trade functions in the Department of Commerce builds upon an agency with extensive trade experience. The Department will retain its operational responsibilities in such areas as export controls, East-West trade, trade adjustment assistance to firms and communities, trade policy analysis, and monitoring foreign compliance with trade agreements. The Department will be substantially reorganized to consolidate and reshape its trade functions under an Under Secretary for International Trade.

With this reorganization, trade functions will be strengthened within the Department of Commerce, and such related efforts in the Department as improvement of industrial innovation and the productivity, encouraging local and regional economic development, and sectoral analysis, will be closely linked to an aggressive trade program. Fostering the international competitiveness of American industry will become the principal mission of the Department of Commerce.

Import remedies

I propose to transfer to the Department of Commerce responsibility for administration of the countervailing duty and antidumping statutes. This function will be performed efficiently and effectively in an organizational setting where trade is the primary mission. This activity will be directed by a new Assistant Secretary for Trade Administration, subject to Senate confirmation. Although the plan permits its provisions to take effect as late as October 1, 1980, I intend to make this transfer effective by January 1, 1980, so that it will occur as the new MTN codes take effect. Commerce will continue its supportive role in the staffing of other unfair trade practice issues, such as cases arising under section 301 of the Trade Act of 1974 [19 U.S.C. 2411].

Commercial representation

This reorganization plan will transfer to the Department of Commerce responsibility for commercial representation abroad. This transfer would place both domestic and overseas export promotion activities under a single organization, directed by an Assistant Secretary for Export Development, charged with aggressively expanding U.S. export opportunities. Placing this Foreign Commercial Service in the Commerce Department will allow commercial officers to concentrate on the promotion of U.S. exports as their principal activity.

Initially, the transfer of commercial representation from State to Commerce will involve all full-time overseas trade promotion and commercial positions (approximately 162), responsibility for this function in the countries (approximately 60) to which these individuals are assigned, and the associated foreign national employees in those countries. Over time, the Department of Commerce undoubtedly will review the deployment of commercial officers in light of changing trade circumstances and propose extensions or alterations of coverage of the Foreign Commercial Service.

MTN implementation

I am dedicated to the aggressive implementation of the Multilateral Trade Agreements. The United States must seize the opportunities and enforce the obligations created by these agreements. Under this proposal, the Department of Commerce will assign high priority to this task. The Department of Commerce will be responsible for the day-to-day implementation of non-agricultural aspects of the MTN agreements. Management of this function will be a principal assignment of an Assistant Secretary for Trade Policy and Programs. Implementation activities will include:

monitoring agreements and targeting problems for consultation and negotiation;

operating a Trade Complaint Center where the private sector can receive advice as to the recourse and remedies available;

aiding in the settlement of disputes, including staffing of formal complaint cases;

identifying problem areas for consideration by the Trade Representative and the Trade Policy Committee;

educational and promotion programs regarding the provisions of the agreements and the processes for dealing with problems that arise;

providing American business with basic information on foreign laws, regulations and procedures;

consultations with private sector advisory committees; and

general analytical support.

These responsibilities will be handled by a unit built around the staff from Commerce that provided essential analytical support to STR throughout the MTN negotiation process. Building implementation of MTN around this core group will assure that the government's institutional memory and expertise on MTN is most effectively devoted to the challenge ahead. When American business needs information or encounters problems in the MTN area, it can turn to the Department of Commerce for knowledgeable assistance.

Matching the increased importance of trade in the Department's mission will be a much strengthened trade organization within the Department. By creating a number of new senior level positions in the Department, we will ensure that trade policy implementation receives the kind of day-to-day top management attention that it both demands and requires.

With its new responsibilities and resources, the Department of Commerce will become a key participant in the formulation of our trade policies. Much of the analysis in support of trade policy formulation will be conducted by the Department of Commerce, which will be close to the operational aspects of the problems that raise policy issues.

To succeed in global competition, we must have a better understanding of the problems and prospects of U.S. industry, particularly in relation to the growing strength of industries abroad. This is the key reason why we will upgrade sectoral analysis capabilities throughout the Department of Commerce, including the creation of a new Bureau of Industrial Analysis. Commerce, with its ability to link trade to policies affecting industry, is uniquely suited to serve as the principal technical expert within the Government on special industry sector problems requiring international consultation, as well as to provide industry-specific information on how tax, regulatory and other Government policies affect the international competitiveness of the U.S. industries.

Commerce will also expand its traditional trade policy focus on industrial issues to deal with the international trade and investment problems of our growing services sector. Under the proposal, there will be comprehensive service industry representation in our industry advisory process, as well as a continuing effort to bring services under international discipline. I expect the Commerce Department to play a major role in developing new service sector initiatives for consideration within the Government.

After an investigation lasting over a year, I have found that this reorganization is necessary to carry out the policy set forth in section 901(a) of title 5 of the United States Code. As described above, this reorganization will increase significantly our ability to implement the MTN agreements efficiently and effectively and will improve greatly the services of the government with regard to export development. These improvements will be achieved with no increase in personnel or expenditures, except for an annual expense of about $300,000 for the salaries and clerical support of the three additional senior Commerce Department officials and a non-recurring expense of approximately $600,000 in connection with the transfers of functions provided in the plan. I find that the reorganization made by this plan makes necessary the provisions for the appointment and pay of a Deputy Secretary, an Under Secretary for International Trade, and two additional Assistant Secretaries of the Department of Commerce, and additional members of the Boards of Directors of the Export-Import Bank and the Overseas Private Investment Corporation.

It is indeed appropriate that this proposal follows so soon after the overwhelming approval by the Congress of the Trade Agreements Act of 1979 [19 U.S.C. 2501 et seq.], for it will sharpen and unify trade policy direction, improve the efficiency of trade law enforcement, and enable us to negotiate abroad from a position of strength. The extensive discussions between Administration officials and the Congress on this plan have been a model of the kind of cooperation that can exist between the two branches. I look forward to our further cooperation in successfully implementing both this reorganization proposal and the MTN agreements.

JIMMY CARTER.

THE WHITE HOUSE, September 25, 1979.

EX. ORD. NO. 12175. EFFECTIVE DATE OF SECTION 2(b)(1) OF REORGANIZATION PLAN NO. 3 OF 1979 RESPECTING REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

Ex. Ord. No. 12175, Dec. 7, 1979, 44 F.R. 70703, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 3 of 1979 (transmitted to the Congress on September 25, 1979) [set out as a note above], the time period prescribed by Section 906 of Title 5 of the United States Code having elapsed without the adoption of a resolution of disapproval by either House of Congress, it is hereby ordered that Section 2(b)(1) of that Plan, establishing the Office of Deputy Secretary of Commerce, is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 12188. FUNCTIONS RELATING TO INTERNATIONAL TRADE

Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, provided:

By the authority vested in me by the Trade Agreements Act of 1979 [see 19 U.S.C. 2501], the Trade Act of 1974 [this chapter], the Trade Expansion Act of 1962 [see Short Title note set out under section 1801 of this title], section 350 of the Tariff Act of 1930 [19 U.S.C. 1351], Reorganization Plan No. 3 of 1979 [set out as a note above], and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1-101. *The United States Trade Representative.*

(a) Except as may be otherwise expressly provided by law, the United States Trade Representative (hereinafter referred to as the "Trade Representative") shall be chief representative of the United States for:

(1) all activities of, or under the auspices of, the General Agreement on Tariffs and Trade;

(2) discussions, meetings, and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration;

(3) negotiations in the United Nations Conference on Trade and Development and other multilateral institutions when trade or commodity issues are the primary issues under consideration;

(4) other bilateral or multilateral negotiations when trade, including East-West trade, or commodities is the primary issue under consideration;

(5) negotiations under sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. 1671c and 1673c); and

(6) negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment.

For purposes of this subsection, the term "negotiations" includes discussions and meetings with foreign governments and instrumentalities primarily concerning preparations for formal negotiations and policies regarding implementation of agreements resulting from such negotiations.

(b) The Trade Representative, in consultation with the Trade Negotiating Committee, shall invite such members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities listed in subsection (a).

(c) The Trade Representative, in consultation with the Trade Negotiating Committee, may delegate to any member of the Trade Negotiating Committee, or to any other appropriate department or agency, primary responsibility for representing the United States in any of the negotiations and other activities set forth in subsection (a).

(d) The Trade Representative, or any department or agency to which responsibility for representing the United States in a negotiation or other activity has been delegated pursuant to subsection (c), shall consult with the Trade Policy Committee and with any affected regulatory agencies on the policy issues arising in connection with the negotiations and other activities listed in subsection (a).

SEC. 1-102. *The Trade Policy Committee.*

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the "Committee") is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. 3 of 1979 [set out as a note above].

(b) The Committee shall be composed of the following:

(1) The Trade Representative, who shall be Chair
(2) The Secretary of Commerce, who shall be Vice Chair
(3) The Secretary of State
(4) The Secretary of the Treasury
(5) The Secretary of Defense
(6) The Attorney General
(7) The Secretary of the Interior
(8) The Secretary of Agriculture
(9) The Secretary of Labor
(10) The Secretary of Transportation
(11) The Secretary of Energy
(12) The Director of the Office of Management and Budget
(13) The Chairman of the Council of Economic Advisers
(14) The Assistant to the President for National Security Affairs
(15) The Director of the United States International Development Cooperation Agency.

The Chair and any member of the Committee may designate a subordinate officer whose status is not below that of an Assistant Secretary to serve in his stead when he is unable to attend any meetings of the Committee. The Chair may invite representatives from other agencies to attend the meetings of the Committee.

(c)(1) There is established, as a subcommittee of the Committee, a Trade Negotiating Committee which shall advise the Trade Representative on the management of negotiations referred to in section 1-101(a) of this order. The members of such subcommittee shall be the Trade Representative (Chair), the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

(2) The Trade Representative, with the advice of the Committee, may create additional subcommittees thereof.

(d) In advising the President on international trade and related matters, the Trade Representative shall take into account and reflect the views of the members of the Committee and of other interested agencies.

Sec. 1-103. *Delegation of Functions.*

(a) The function vested in the President by section 412(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2542(b)) is delegated to the Secretary of Commerce with regard to the technical office established under section 412(a)(1) of such Act [19 U.S.C. 2542(a)(1)] and to the Secretary of Agriculture with regard to the technical office established under section 412(a)(2) of such Act [19 U.S.C. 2542(a)(2)]. In prescribing the functions of each technical office, the Secretary concerned shall consult with the Trade Representative and with all affected regulatory agencies. The functions delegated by this section shall be exercised in coordination with the Trade Representative.

(b) The functions of the President under sections 2(b) and 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b) and 2513) and section 701(b) of the Tariff Act of 1930 (19 U.S.C. 1671(b)) are delegated to the Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

Sec. 1-104. *Authority Under the Foreign Service Act and Related Laws.*

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to establish a Foreign Commercial Service in the Department of Commerce, and a category of career officers of the Foreign Commercial Service to be known as Foreign Commercial Officers. For purposes of the utilization by the Secretary of the authorities granted to the Secretary under this section, the terms "Foreign Service" and "Foreign Service Officer" shall be construed to mean "Foreign Commercial Service" and "Foreign Commercial Officer," respectively.

(b)(1) Except as provided in paragraph (3), and except with regard to career ministers and career ambassadors, the Secretary is authorized to exercise, with respect to Foreign Service commercial officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees employed to perform the functions transferred under section 5(b)(1) of Reorganization Plan No. 3 of 1979 (hereinafter referred to as the "Plan") [set out as a note above], all authority available to the Secretary of State under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.) or under any other existing or future provision of law applicable to the Foreign Service of the United States, Foreign Service staff officers and employees, and alien clerks and employees. Such authority shall include, but not be limited to, the prescription of regulations incident to the exercise of such authority.

(2) All provisions of the Foreign Service Act of 1946, as amended [22 U.S.C. 801 et seq.], or of any other existing or future law, that apply to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State shall be applicable to Foreign Commercial officers, Foreign Service officers, Foreign Service Reserve officers, Foreign staff officers and employees, or alien clerks and employees of the Department of Commerce.

(3) There are excluded from the authority granted to the Secretary by paragraph (1) the following powers now vested in or delegated to the Secretary of State:

(A) to issue regulations pertaining to overseas differentials and allowances;

(B) to administer the Foreign Service Retirement and Disability System under title VIII of the Foreign Service Act of 1946, as amended (22 U.S.C. 1061 et seq.); and

(C) to commission or to recommend that the President commission Foreign Service officers, Foreign Service Reserve officers, and Foreign Service staff officers as diplomatic and consular officers under sections 512, 514, 524, and 533 of the Foreign Service Act of 1946, as amended (22 U.S.C. 907, 909, 924, and 938).

(5) The Secretary is authorized to exercise, with regard to the functions transferred under section 5(b) of the Plan [set out as a note above], the authority of the Secretary of State under section 4 of the Act of May 26, 1949, as amended (22 U.S.C. 2658) to promulgate such rules and regulations as may be necessary to the performance of such functions.

(c) The Board of the Foreign Service and the Board of Examiners for the Foreign Service established by Executive Order 11264 of December 31, 1965, as amended [22 U.S.C. 826 note], shall exercise with respect to Foreign Service personnel of the Department of Commerce the functions delegated to them by that order with respect to Foreign Service personnel of the Department of State. The Boards shall perform such additional functions with respect to Foreign Service personnel of the Department of Commerce as the Secretary may from time to time delegate or otherwise assign, consistent with the functions of such boards.

Sec. 1-105. *Prior Executive Orders and Determination.*

(a) Section 1(b) of Executive Order 11269 of February 14, 1966, as amended [22 U.S.C. 286b note], is amended by adding "the United States Trade Representative," after "the Secretary of State,".

(b)(1) Section 1 of Executive Order 11539 of June 30, 1970 [7 U.S.C. 1854 note], is amended to read as follows:

"Section 1. The United States Trade Representative, with the concurrence of the Secretary of Agriculture and the Secretary of State, is authorized to negotiate bilateral agreements with representatives of governments of foreign countries limiting the export from the respective countries and the importation into the United States of—

(1) fresh, chilled, or frozen cattle meat,

(2) fresh, chilled, or frozen meat of goats and sheep (except lambs), and

(3) prepared and preserved beef and veal (except sausage) if articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved, that are the products of such countries.".

(2) Section 4 of such order is amended by striking out "the Secretary of State" and inserting in lieu thereof "the United States Trade Representative".

(c) The last sentence of section 1(a) of Executive Order 11651 of March 3, 1972, as amended [7 U.S.C. 1854 note], is amended to read as follows: "The United States Trade Representative, or his designee, also shall be a member of the Committee.".

(d) The first sentence of section 3 of Executive Order 11703 of February 7, 1973 [19 U.S.C. 1862 note], is amended to read as follows: "The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers, as members.".

(e) Sections 2(b) and 3(a), the first sentence of section 3(c), and sections 3(e), 3(f), and 6 of Executive Order 11846 of March 27, 1975, as amended [19 U.S.C. 2111 note], are revoked.

(f)(1) Section 1(a)(5) of Executive Order 11858 of May 7, 1975 [22 U.S.C. 2841 note], is amended to read: "(5) The United States Trade Representative".

(2) Section 1(a)(6) of such order is amended to read: "(6) The Chairman of the Council of Economic Advisers".

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979) [19 U.S.C. 2503 note], delegating functions under section 2(b) of the Trade Agreements Act of 1979 [19 U.S.C. 2503(b)] and section 701(b) of the Tariff Act of 1930 [19 U.S.C. 1671b], is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, Proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

SEC. 1-106. *Incidental Transfers and Reassignments.* So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

SEC. 1-107. *Effective Dates.*

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979 [set out as a note above], and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan [set out as a note above] shall take effect as of April 1, 1980.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541 of this title.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 2191. Bills implementing trade agreements on nontariff barriers and resolutions approving commercial agreements with communist countries

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 2112, 2435, 2437, 2503, 2504 of this title.

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions

(1) For purposes of this section, the term "resolution" means only—

(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ———.", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filled with the appropriate date.

(2) The second blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 1303(e) of this title, with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 2437(c)(2) of this title, with the phrase "the extension of nondiscriminatory treatment with respect to the products of ———" (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 2437(c)(3) of this title, with the phrase "the report of the President submitted under section ——— of the Trade Act of 1974 with respect to ———" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(3) redesignated (2)

[*See main edition for text of (b)*]

(c) Discharge of committees

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 2194(b) of this title, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

[*See main edition for text of (2); (d) to (f)*]

(As amended Pub. L. 96-39, title IX, § 902(a)(1), title XI, § 1106(c)(5), July 26, 1979, 93 Stat. 299, 312.)

REFERENCES IN TEXT

Section 203 of the Trade Act of 1974, referred to in subsec. (a)(1)(A), is section 203 of Pub. L. 93-618, title II, Jan. 3, 1975, 88 Stat. 2015, which is classified to section 2253 of this title.

Section 303(d) of the Tariff Act of 1930, referred to in subsec. (a)(2)(A), is section 303 of act June 17, 1930, ch. 497, title III, 46 Stat. 687, which is classified to section 1303 of this title.

Sections 402(b) and 409(b) of the Trade Act of 1974, referred to in subsec. (a)(2)(C), are sections 402(b) and 409(b) of Pub. L. 93-618, title IV, Jan. 3, 1975, 88 Stat. 2060, 2064, respectively, which are classified to sections 2432 and 2439 of this title, respectively.

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96-39, § 902(a)(1)(A), substituted "does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ———.', the blank space being filled with the appropriate date" for "does not approve ——— transmitted to the Congress on ———.', the first blank space being filled in accordance with paragraph (2) and the second blank space being filled with the appropriate date".

Subsec. (a)(1)(B). Pub. L. 96-39, § 902(a)(1)(B), substituted "paragraph (2)," for "paragraph (3),".

Subsec. (a)(2). Pub. L. 96-39, § 902(a)(1)(C), (D), redesignated par. (3) as (2). Former par. (2), relating to the first blank space referred to in subsec. (a)(1)(A), was struck out.

Subsec. (a)(3). Pub. L. 96-39, § 902(a)(1)(C), (D), redesignated par. (3) as (2).

Subsec. (c)(1). Pub. L. 96-39, § 1106(c)(5), substituted "section 2194(b) of this title" for "section 2193(b) of this title".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective July 26, 1979, see sections 903 and 1114 of Pub. L. 96-39, set out as

Effective Date notes under sections 2411 and 2581 of this title, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1330, 2191, 2193, 2253, 2412, 2435, 2437 of this title.

§ 2193. Resolutions relating to extension of waiver authority under section 402 of the Trade Act of 1974

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2191, 2432 of this title.

§ 2194. Special rules relating to Congressional procedures

(a) Whenever, pursuant to section 2112(e), 2253(b), 2432(d), or 2437(a) or (b), or section 1303(e) of this title, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 2253(c), 2437(c)(2), and 2437(c)(3) of this title, the 90-day period referred to in such sections shall be computed by excluding—

[*See main edition for text of (1) and (2)*]

(As amended Pub. L. 96-39, title IX, § 902(a)(2), July 26, 1979, 93 Stat. 300.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-39 struck out reference to section 2412(a) of this title.

Subsec. (b). Pub. L. 96-39 struck out reference to section 2412(b) of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 903 of Pub. L. 96-39, set out as an Effective Date note under section 2411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2192 of this title.

PART 6—CONGRESSIONAL LIAISON AND REPORTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2514 of this title.

§ 2211. Congressional delegates to negotiations

[*See main edition for text of (a)*]

(b)(1) The United States Trade Representative shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

[*See main edition for text of (2)*]

(As amended Pub. L. 96-39, § 3(e), July 26, 1979, 93 Stat. 150; 1979 Reorg. Plan No. 3, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-39 substituted "trade agreement or any requirement of, amendment to, or recommendation under, such agreement" for "trade agreement".

CHANGE OF NAME

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsec. (b)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2132, 2155, 2517 of this title.

§ 2213. Reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2155, 2514 of this title.

SUBCHAPTER II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

PART 1—IMPORT RELIEF

§ 2251. Investigation by International Trade Commission

(a) Petitions for eligibility for import relief

[*See main edition for text of (1)*]

(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the United States Trade Representative and the agencies directly concerned.

(b) Requests to Commission by President, Trade Representative, or Congressional Committees for investigation; nature and scope of Commission's investigation

(1) Upon the request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1) of this section, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

[*See main edition for text of (2) to (5)*]

(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII [19 U.S.C. 1671 et seq. and 1673 et seq., respectively] or section 337 [19 U.S.C. 1337] of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly

notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 96-39, title I, § 106(b)(3), July 26, 1979, 93 Stat. 193; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

References in Text

The Tariff Act of 1930, referred to in subsec. (b)(6), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§ 1671 et seq. and 1673 et seq. respectively) of subtitle IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

Amendments

Subsec. (b)(6). Pub. L. 96-39 substituted "subtitles A and B of title VII or section 337 of the Tariff Act of 1930" for "the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930".

Change of Name

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsecs. (a)(2) and (b)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

§ 2253. Import relief

(a) Imposition of or increase in duties; tariff-rate quotas; quantitative restrictions on imports; orderly marketing agreements

If the President determines to provide import relief under section 2252(a)(1) of this title, he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 2252(c) of this title to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(5) take any combination of such actions.

(b) Transmittal to Congress of document setting forth Presidential action

(1) On the day the President determines under section 2252 of this title to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 2251(d)(1)(A) of this title, he shall state the reason for such difference.

[*See main edition for text of* (*2*)]

(3) On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(c) Congressional action

(1) If the President reports under subsection (b) of this section that he is taking action which differs from the action recommended by the Commission under section 2251(d)(1)(A) of this title, or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon the adoption by both Houses of Congress (within the 90-day period following the date on which the document referred to in subsection (b) of this section is transmitted to the Congress), by an affirmative vote of a majority of the Members of each House present and voting under the procedures set forth in section 2192 of this title, of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 2252(a)(1)(A) of this title.

[*See main edition for text of* (*2*); (*d*)]

(e) Effective date of relief

[*See main edition for text of* (*1*) *and* (*2*)]

(3) If the President negotiates an orderly marketing agreement under subsection (a)(4) or (5) of this section and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h) of this section, provide import relief under subsection (a) of this section.

[*See main edition for text of* (*4*); (*f*)]

(g) Rules and regulations

(1) The President shall by regulations provide for the efficient and fair administration of any restriction proclaimed pursuant to this section.

(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3) of this section, the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3) of this section with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

[*See main edition for text of* (*3*)]

(h) Termination of relief

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Any import relief provided pursuant to this section or section 1981 or 1982 of this title may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) of this section and after taking into account the considerations described in section 2252(c) of this title, that such extension is in the national interest.

(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) of this section and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

[*See main edition for text of (5); (i) to (k)*]

(As amended Pub. L. 96-39, title XI, § 1106(d)(1)-(7), July 26, 1979, 93 Stat. 312.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (f)(1), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Amendments

1979—Subsec. (a)(4). Pub. L. 96-39, § 1106(d)(1), substituted "negotiate, conclude, and carry out" for "negotiate".

Subsec. (b)(1). Pub. L. 96-39, § 1106(d)(2)(A), (B), substituted "On the day the President determines under section 2252 of this title to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement" for "On the day on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements" and section "2251(d)(1)(A)" for "2251(b)(1)(A)" of this title.

Subsec. (b)(3). Pub. L. 96-39, § 1106(d)(2)(C), added par. (3).

Subsec. (c)(1). Pub. L. 96-39, § 1106(d)(3)(A), (B), substituted "section 2251(d)(1)(A)" for "section 2251(b)(1)(A)" of this title and inserted "under the procedures set forth in section 2192 of this title" following "voting".

Subsec. (e)(3). Pub. L. 96-39, § 1106(d)(4), substituted "subsection (a) of this section" for "subsection (a)(1), (2), (3), or (5) of this section".

Subsec. (g)(1). Pub. L. 96-39, § 1106(d)(5)(A), (B), struck out "quantitative" preceding "restriction" and substituted "pursuant to this section" for "pursuant to subsection (a)(3) or (c) of this section".

Subsec. (g)(2). Pub. L. 96-39, § 1106(d)(6), inserted references to subsec. (e)(3) of this section.

Subsec. (h)(3). Pub. L. 96-39, § 1106(d)(7)(A), (B), inserted reference to subsec. (i)(3) of this section and substituted "one period of not more than 3 years" for "one 3-year period".

Subsec. (h)(4). Pub. L. 96-39, § 1106(d)(7)(A), inserted reference to subsec. (i)(3) of this section.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1330, 1872, 1981, 2133, 2137, 2192, 2194, 2251, 2252, 2436, 2463, 2581 of this title.

Part 2—Adjustment Assistance for Workers

Part Referred to in Other Sections

This part is referred to in sections 2251, 2252, 2318, 2391 of this title.

SUBPART C—GENERAL PROVISIONS

§ 2322. Judicial review

Section Referred to in Other Sections

This section is referred to in title 16 section 79*l*.

Part 5—Miscellaneous Provisions

§ 2392. Adjustment Assistance Coordinating Committee

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

(As amended 1979 Reorg. Plan No. 3, § 1(c), eff. Jan. 2, 1980, 44 F.R. 69274, 93 Stat. 1381.)

Change of Name

"Deputy United States Trade Representative" was substituted for "Deputy Special Trade Representative", meaning Deputy Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(c), 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SUBCHAPTER III—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

§ 2411. Determinations and action by President

(a) Determinations requiring action

If the President determines that action by the United States is appropriate—

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

(b) Other action

Upon making a determination described in subsection (a) of this section, the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and

(2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) Presidential procedures

(1) Action on own motion

If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 2412 of this title, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) Action requested by petition

Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 2414 of this title with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(d) Special provisions

(1) Definition of commerce

For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.

(2) Vessel construction subsidies

An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(Pub. L. 93-618, title III, § 301, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 295; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Prior Provisions

A prior section 301 of Pub. L. 93-618, title III, Jan. 3, 1975, 88 Stat. 2041, which related to Presidential responses to foreign import restrictions and export subsidies and which was classified to this section, was omitted from the Code in the general revision of title III of Pub. L. 93-618 by Pub. L. 96-39, title IX, § 901, July 26, 1979, 92 Stat. 295.

Change of Name

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsec. (c)(2), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Effective Date

Section 903 of Pub. L. 96-39 provided that: "The amendments made by sections 901 and 902 [enacting this subchapter and amending sections 1872, 2192, and 2194 of this title] shall take effect on the date of the enactment of this Act [July 26, 1979]. Any petition for review filed with the Special Representative for Trade Negotiations under section 301 of the Trade Act of 1974 (as in effect on the day before such date of enactment) [former section 2411 of this title] and pending on such date of enactment shall be treated as an investigation initiated on such date of enactment under section 302(b)(2) of the Trade Act of 1974 (as added by section 901 of this Act) [section 2412(b)(2) of this title] and any information developed by, or submitted to, the Special Representative before such date of enactment under the review shall be treated as part of the information developed during such investigation."

Section Referred to in Other Sections

This section is referred to in sections 2171, 2412, 2414, 2416, 2554, 2581 of this title.

§ 2412. Petitions for action by President

(a) Filing of petition with Trade Representative

Any interested person may file a petition with the United States Trade Representative (hereinafter in this subchapter referred to as the "Trade Representative") requesting the President to take action under section 2411 of this title and setting forth the allegations in support of the request. The Trade Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations regarding petitions

(1) Negative determination

If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) Affirmative determination

If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

(Pub. L. 93-618, title III, § 302, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 296; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

PRIOR PROVISIONS

A prior section 302 of Pub. L. 93-618, title III, Jan. 3, 1975, 88 Stat. 2043, which related to the procedure for Congressional disapproval of certain actions taken by the President to eliminate foreign import restrictions and export subsidies and which was classified to this section, was omitted from the Code in the general revision of title III of Pub. L. 93-618 by Pub. L. 96-39, title IX, § 901, July 26, 1979, 92 Stat. 295.

CHANGE OF NAME

"United States Trade Representative" and "Trade Representative" were substituted for "Special Representative for Trade Negotiations" and "Special Representative", respectively, in subsecs. (a) and (b)(1), (2), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1872, 2411, 2413, 2414, 2416 of this title.

§ 2413. Consultation upon initiation of investigation

On the date an affirmative determination is made under section 2412(b) of this title with respect to a petition, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner and the appropriate private sector representatives provided for under section 2155 of this title in preparing United States presentations for consultations and dispute settlement proceedings.

(Pub. L. 93-618, title III, § 303, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 297; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2414 of this title.

§ 2414. Recommendations by the Special Representative

(a) Recommendations

(1) In general

On the basis of the investigation under section 2412 of this title, and the consultations (and the proceedings, if applicable) under section 2413 of this title, and subject to subsection (b) of this section, the Trade Representative shall recommend to the President what action, if any, he should take under section 2411 of this title with respect to the issues raised in the petition. The Trade Representative shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 2412(b)(2) of this title if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2503(a) of this title (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) Special rule

In the case of any petition—

(A) an investigation with respect to which is initiated on or after July 26, 1979 (including any petition treated under section 903 of the Trade Agreements Act of 1979 as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2503(a) of this title that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 2413 of this title need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) Report if settlement delayed

In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) Consultation before recommendation

Before recommending that the President take action under section 2411 of this title with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 2412 of this title, the Trade Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate private sector advisory representatives provided for under section 2155 of this title, and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

(Pub. L. 93-618, title III, § 304, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 297; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

REFERENCES IN TEXT

Section 903 of the Trade Agreements Act of 1979, referred to in subsec. (a)(2)(A), is section 903 of Pub. L. 96-39, title IX, July 26, 1979, 93 Stat. 300, which is set out as an Effective Date note under section 2411 of this title.

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsecs. (a)(1), (2), (3), and (b), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2411 of this title.

§ 2415. Requests for information

(a) In general

Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) The nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the Trade Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) If information not available

If information that is requested by an interested party under subsection (a) of this section is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

(Pub. L. 93-618, title III, § 305, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 299; 1979 Reorg. Plan No. 3, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsecs. (a), (a)(1), and (b), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2416. Administration

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 2412 of this title, developments in and current status of each such proceeding, and the actions taken, or the reasons for no action, by the President under section 2411 of this title.

(Pub. L. 93-618, title III, § 306, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 299; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in provision preceding par. (1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SUBCHAPTER IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

§ 2431. Exception of products of certain countries or areas

References in Text

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Report on Effect of Subchapter; Recommendations

Pub. L. 95-501, title VI, § 604, Oct. 21, 1978, 92 Stat. 1692, provided that: "Within six months after the date of enactment of this Act [Oct. 21, 1978], the Secretary of Agriculture shall submit to Congress a report detailing the effect on United States agriculture of title IV of the Trade Act of 1974 [this subchapter], including a recommendation as to whether the provisions of such title [this subchapter] should be repealed or amended."

§ 2432. Freedom of emigration in East-West trade

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Waiver authority of President

(1) During the 18-month period beginning on January 3, 1975, the President is authorized to waive by Executive order the application of subsections (a) and (b) of this section with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

[*See main edition for text of* (*2*) *and* (*3*); (*d*) *and* (*e*)]

(As amended Pub. L. 96-39, title XI, § 1106(f)(1), July 26, 1979, 93 Stat. 312.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (e), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Amendments

1979—Subsec. (c)(1). Pub. L. 96-39 substituted "subsections (a) and (b) of this section" for "subsection (a) and (b) of this section" in the provisions preceding subpar. (A).

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Ex. Ord. No. 12051. Waiver for Hungarian People's Republic

Ex. Ord. No. 12051, Apr. 7, 1978, 43 F.R. 15131, provided:

By virtue of the authority vested in me as President of the United States of America by Section 402(c)(2) of the Trade Act of 1974 (88 Stat. 2057, 19 U.S.C. 2432(c)(2)), which continues to apply to the Hungarian People's Republic pursuant to Section 402(d) [subsec. (d) of this section]; and having made the report to the Congress required by Section 402(c)(2) [subsec. (c)(2) of this section], I waive the application of subsections (a) and (b) of Section 402 of said Act [subsecs. (a) and (b) of this section] with respect to the Hungarian People's Republic.

Jimmy Carter.

Ex. Ord. No. 12167. Waiver for People's Republic of China

Ex. Ord. No. 12167, Oct. 23, 1979, 44 F.R. 61167, provided:

By virtue of the authority vested in me as President of the United States of America by section 402(c)(2) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978) [subsec. (c)(2) of this section], which continues to apply to the People's Republic of China pursuant to section 402(d) [subsec. (d) of this section], and having made the report to the Congress required by section 402(c)(2) [subsec. (c)(2) of this section], I waive the application of subsections (a) and (b) of section 402 of said Act [subsecs. (a) and (b) of this section] with respect to the People's Republic of China.

Jimmy Carter.

§ 2433. United States personnel missing in action in Southeast Asia

References in Text

The Tariff Schedules of the United States, referred to in subsec. (b), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 2434. Extension of nondiscriminatory treatment

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Suspension or withdrawal of extensions of nondiscriminatory treatment

The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) of this section and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Tariff Schedules for the United States.

(As amended Pub. L. 96-39, title XI, § 1106(f)(2), July 26, 1979, 93 Stat. 312.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (c), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Amendments

1979—Subsec. (c). Pub. L. 96-39 struck out a comma following "subsection (a) of this section".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Proc. No. 4697. Agreement With People's Republic of China

Proc. No. 4697, Oct. 23, 1979, 44 F.R. 61161, provided:

As President of the United States of America, acting through my representatives, I entered into the negotiation of an agreement on trade relations between the United States of America and the People's Republic of China with representatives of the People's Republic of China;

The negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (P.L. 93-618, January 3, 1975; 88 Stat. 1978) ("the Act") [this chapter];

An "Agreement on Trade Relations between the United States of America and the People's Republic of China", in English and Chinese, was signed on July 7, 1979, by representatives of the two Governments, and is annexed to this Proclamation;

The Agreement conforms to the requirements relating to bilateral commercial agreements specified in section 405(b) of the Act [19 U.S.C. 2435(b)];

Article X of the Agreement provides that it shall come into force on the date on which the Contracting Parties have exchanged notifications that each has completed the legal procedures necessary for this purpose; and

Section 405(c) of the Act [19 U.S.C. 2435(c)] provides that a bilateral commercial agreement and a proclamation implementing such agreement shall take effect only if approved by the Congress;

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, proclaim as follows:

(1) This Proclamation shall become effective, said Agreement shall enter into force according to its terms, and nondiscriminatory treatment shall be extended to the products of the People's Republic of China in accordance with the terms of the said Agreement, on the date on which the Contracting Parties have exchanged notifications that each has completed the legal procedures necessary for this purpose in accordance with Article X of the said Agreement.

(2) General Headnote 3(e) of the Tariff Schedules of the United States [see Publication of Tariff Schedules note under section 1202 of this title] is amended by deleting therefrom "China (any part of which may be under Communist domination or control)" and "Tibet" as of the effective date of this proclamation and a notice thereof shall be published in the Federal Register promptly thereafter.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

Proc. No. 4560. Agreement with Hungarian People's Republic

Proc. No. 4560, Apr. 7, 1978, 43 F.R. 15125, provided:

As President of the United States of America, acting through my representatives, I entered into the negotiation of an agreement on trade relations between the United States of America and the Hungarian People's Republic with representatives of the Hungarian People's Republic;

The negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (P.L. 93-618, January 3, 1975; 88 Stat. 1978) ("the Act") [this chapter];

An "Agreement on Trade Relations between the United States of America and the Hungarian People's Republic," in English and Hungarian, was signed on March 17, 1978, by representatives of the two Governments, and is annexed [filed with the Office of the Federal Register] to this Proclamation;

The Agreement conforms to the requirements relating to bilateral commercial agreements specified in Section 405(b) of the Act [section 2435(b) of this title];

Article XI of the Agreement provides that it shall enter into force on the date of exchange of written notices of acceptance by the Governments of the United States of America and the Hungarian People's Republic; and

Section 405(c) of the Act [section 2435(c) of this title] provides that a bilateral commercial agreement and a proclamation implementing such agreement shall take effect only if approved by the Congress;

Now, Therefore, I, Jimmy Carter, President of the United States of America, proclaim as follows:

(1) This Proclamation shall become effective, said Agreement shall enter into force according to its terms, and nondiscriminatory treatment shall be extended to the products of the Hungarian People's Republic in accordance with the terms of the said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XI of the said Agreement; and

(2) General Headnote 3(e) of the Tariff Schedules of the United States is amended by deleting therefrom "Hungary" as of the effective date of this proclamation and a notice thereof shall be published in the Federal Register promptly thereafter.

In Witness Whereof, I have signed this Proclamation this seventh day of April, in the year of our Lord one thousand nine hundred seventy-eight, and of the Independence of the United States of America the two hundred second.

Jimmy Carter.

§ 2435. Commercial agreements

[See main edition for text of (a)]

(b) Terms of agreements

Any such bilateral commercial agreement shall—

[See main edition for text of (1) to (7)]

(8) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

[See main edition for text of (9) and (10); (c)]

(As amended Pub. L. 96-39, title XI, § 1106(f)(3), July 26, 1979, 93 Stat. 312.)

Amendments

1979—Subsec. (b)(8). Pub. L. 96-39 substituted "may include arrangements" for "may include those".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

§ 2436. Market disruption

(a) Investigation by International Trade Commission; report; publication

(1) Upon the filing of a petition by an entity described in section 2251(a)(1) of this title,

upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

[*See main edition for text of* (2) *to* (4); (*b*) *to* (*e*)]

(As amended 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" in subsec. (a)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 2581 of this title.

§ 2437. Procedure for Congressional approval or disapproval of extension of nondiscriminatory treatment and Presidential reports

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (c)(3), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 2439. Freedom to emigrate to join a very close relative in United States

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (c), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 2441. Omitted

CODIFICATION

Section, Pub. L. 93-618, title IV, § 406, Jan. 3, 1975, 88 Stat. 2062, which provided for the establishment of an East-West Foreign Trade Board, was omitted as obsolete in view of the abolition of the East-West Foreign Trade Board and the transfer of its functions by sections 5(c), 5(e), and 6 of Reorg. Plan No. 3 of 1979, 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. The functions of the Board under subsec. (a), requiring the Board to monitor trade between persons and agencies of the United States Government and nonmarket economy countries or instrumentalities of such countries to insure such trade is in the national interest of the United States, and under subsec. (b), requiring persons who export technology vital to the national interest of the United States to a nonmarket economy country or an instrumentality of such country, and any agency of the United States which provides credits, guarantees or insurance to such country or instrumentality in an amount in excess of $5,000,000 during any calendar year or which provides credits, guarantees or insurance to all such countries or instrumentalities in excess of $5,000,000 during a calendar year, to report to the Board on the nature and terms of such export, were transferred to the interagency organization established under section 1872 of this title by section 5(e) of Reorg. Plan No. 3 of 1979. The functions of the Board under subsec. (c), requiring the Board to submit quarterly reports on trade between the United States and nonmarket economy countries and instrumentalities of such countries, with such reports to include a review of the status of negotiations of bilateral trade agreements between the United States and such countries under this subchapter, the activities of the joint trade commission established pursuant to such agreements, the resolution of commercial disputes between the United States and such countries, any exports from such countries which have caused disruption of United States markets, and recommendations for the promotion of east-west trade in the national interest of the United States, were transferred to the President by section 5(c) of Reorg. Plan No. 3 of 1979.

SUBCHAPTER V—GENERALIZED SYSTEM OF PREFERENCES

§ 2462. Beneficiary developing countries

(a) Designation by President

[*See main edition for text of* (1) *and* (2)]

(3) For purposes of this subchapter, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are barred from designation under subsection (b) of this section shall be treated as one country for purposes of this subchapter.

(b) Countries ineligible for designation as beneficiary developing countries

No designation shall be made under this section with respect to any of the following:

> Australia, Austria, Canada, Czechoslovakia, European Economic Community member states, Finland, Germany (East), Hungary, Iceland, Japan, Monaco, New Zealand, Norway, Poland, Republic of South Africa, Sweden, Switzerland, Union of Soviet Socialist Republics.

In addition, the President shall not designate any country a beneficiary developing country under this section—

[*See main edition for text of* (1)]

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

[*See main edition for text of* (3) *to* (5)]

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute; and

[*See main edition for text of* (7)]

Paragraphs (4), (5), (6), and (7) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

[*See main edition for text of* (c)]

(d) Exemptions

(1) The President may exempt from the application of paragraph (2) of subsection (b) of this section any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 2118 of this title of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The President may exempt from the application of paragraph (2) of subsection (b) of this section any country that enters into a bilateral product-specific trade agreement with the United States under section 2111 or 2112 of this title before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

(As amended Pub. L. 96-39, title XI, §§ 1106(g)(1), (2), 1111(a)(1), (2), July 26, 1979, 93 Stat. 312, 313, 315.)

AMENDMENTS

1979—Subsec. (a)(3). Pub. L. 96-19, 1111(a)(1), inserted reference to associations of countries which are contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties.

Subsec. (b)(2). Pub. L. 96-39, § 1106(g)(1), struck out the phrase "withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level which causes serious disruption of the world economy" thereby correcting a typographical error in Pub. L. 93-618 under which that phrase had been set out twice.

Subsec. (b)(6). Pub. L. 96-39, § 1106(g)(2), inserted a comma following "partnership".

Subsec. (d). Pub. L. 96-39, § 1111(a)(2), designated the existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

EX. ORD. NO. 11888. IMPLEMENTING THE GENERALIZED SYSTEM OF PREFERENCES

Ex. Ord. No. 11888, Nov. 24, 1975, 40 F.R. 55276, as amended by Ex. Ord. No. 11906, Feb. 26, 1976, 41 F.R. 8758; Ex. Ord. No. 11934, Aug. 30, 1976, 41 F.R. 37084; Ex. Ord. No. 11960, Jan. 19, 1977, 42 F.R. 4317; Ex. Ord. No. 11974, Feb. 25, 1977, 42 F.R. 11230A; Ex. Ord. No. 12032, Dec. 27, 1977, 42 F.R. 64851; Ex. Ord. No. 12041, Feb. 25, 1978, 43 F.R. 8099; Proc. No. 4561, Apr. 7, 1978, 43 F.R. 15127; Ex. Ord. No. 12104, Dec. 15, 1978, 43 F.R. 59053; Ex. Ord. No. 12124, Feb. 28, 1979, 44 F.R. 11729; Ex. Ord. No. 12180, Dec. 11, 1979, 44 F.R. 72077; Ex. Ord. No. 12181, Dec. 11, 1979, 44 F.R. 72083, amended the Tariff Schedules of the United States in order to implement the Generalized System of Preferences established by this subchapter. The text of Ex. Ord. No. 11888 will no longer be set out in the Code in view of the discontinuation of publication of the Tariff Schedules in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 2463. Eligible articles

[*See main edition for text of* (a)]

(b) Eligible articles qualifying for duty-free treatment

The duty-free treatment provided under section 2461 of this title with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) If[1] the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 2462(a)(3) of this title, plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection.

[*See main edition for text of* (c)]

(As amended Pub. L. 96-39, title XI, § 1111(a)(3), July 26, 1979, 93 Stat. 315.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in (c)(1)(e), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-39 restated par. (2) so as to reduce the minimum value-added requirement from 50 percent to 35 percent for associations of countries comparable to the existing minimum percentage for individual countries or single members of an association and struck out provision following par. (2), which defined the term "country" as used in former par. (2)(a).

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[1] So in original. Probably should be "if".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

§ 2464. Limitations on preferential treatment

[*See main edition for text of (a) and (b)*]

(c) Designation, continuance of designation, or redesignation as beneficiary developing country notwithstanding increases in exports to United States

(1) Whenever the President determines that any country—

[*See main edition for text of (A) and (B)*]

then, not later than 90 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 90th day, the President determines and publishes in the Federal Register that, with respect to such country—

[*See main edition for text of (i) to (iii)*]

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

[*See main edition for text of (2)*]

(3) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 2462(a)(3) of this title, but does include a country which is a member of any such association.

(d) Domestic non-production of like or directly competitive articles

Subsection (c)(1)(B) of this section does not apply with respect to any eligible article if a like or directly competitive article is not produced on January 3, 1975, in the United States. The President may disregard subsection (c)(1)(B) of this section with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979.

[*See main edition for text of (e)*]

(As amended Pub. L. 96-39, title XI, §§ 1106(g)(3), 1111(a)(4), July 26, 1979, 93 Stat. 313, 315.)

AMENDMENTS

1979—Subsec. (c)(1). Pub. L. 96-39, § 1106(g)(3), substituted "90 days" and "90th day" for "60 days" and "60th day", respectively, in the provisions following subpar. (B).

Subsec. (c)(3). Pub. L. 96-39, § 1111(a)(4)(A), added par. (3).

Subsec. (d). Pub. L. 96-39, § 1111(a)(4)(B), provided that the President may disregard subsection (c)(1)(B) of this section with respect to any eligible article if the appraised value of the total imports of that article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (c)(1) of this section by section 1106(g)(3) of Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Section 1111(b) of Pub. L. 96-39 provided that: "The amendments made by paragraph (4) of subsection (a) [adding subsec. (c)(3) of this section and amending subsec. (d) of this section] shall take effect on April 1, 1980."

SUBCHAPTER VI—GENERAL PROVISIONS

§ 2481. Definitions

For purposes of this chapter—

[*See main edition for text of (1)*]

(2) The term "other import restriction" includes a limitation, prohibition, charge, or exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

[*See main edition for text of (3)*]

(4) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 1401a or 1402 of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable to the article concerned during such representative period.

[*See main edition for text of (5) to (10)*]

(As amended Pub. L. 96-39, title II, § 202(c)(1), title XI, § 1106(h)(1), July 26, 1979, 93 Stat. 202, 313.)

REFERENCES IN TEXT

For repeal of section 1402 of this title, referred to in par. (4), see Repeal of Section note set out under section 1402 of this title.

The effective date of the amendments made by title II of the Trade Agreements Act of 1979, referred to in par. (4), is Jan. 1, 1981, upon entry into force with respect to the United States of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation. See section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

The Tariff Schedules of the United States, referred to in par. (7), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

AMENDMENTS

1979—Par. (2). Pub. L. 96-39, § 1106(h)(1), substituted "or exaction" for "and exaction".

Par. (4). Pub. L. 96-39, § 202(c)(1), substituted "section 1401a or 1402 of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in sections 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable" for "section 1401a or 1402 of this title applicable".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of par. (2) by section 1106(h)(1) of Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

Amendment of par. (4) by section 202(c)(1) of Pub. L. 96-39 effective Jan. 1, 1981, upon entry into force with respect to the United States of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, subject to an earlier effective date (but not before July 1, 1980) upon Presidential proclamation, see section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

§ 2483. Consequential changes in Tariff Schedules of the United States

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

§ 2486. Trade relations with North American countries

(a) It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b) The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after July 26, 1979. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.

(As amended Pub. L. 96-39, title XI, § 1104(a), (b)(1), July 26, 1979, 93 Stat. 310.)

AMENDMENTS

1979—Pub. L. 96-39 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

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§ 2501. Short title

This Act may be cited as the "Trade Agreements Act of 1979".

(Pub. L. 96-39, § 1(a), July 26, 1979, 93 Stat. 144.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, which enacted this chapter and sections 1516a, 1671 to 1671f, 1673 to 1673i, 1675, 1677 to 1677g, and 2413 to 2416 of this title, amended the Tariff Schedules, and sections 1303, 1311, 1315, 1332, 1336, 1337, 1351, 1401a, 1466, 1500, 1514 to 1516, 1872, 2033, 2112, 2119, 2131, 2155, 2192, 2194, 2211, 2251, 2253, 2411, 2412, 2432, 2434, 2435, 2462 to 2464, 2481, and 2486 of this title, section 5315 of Title 5, Government Organization and Employees, section 301 of Title 13, Census, sections 993, 5001 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of Title 26, Internal Revenue Code, and sections 1541, 1582, 2632, and 2633, and 2637 of Title 28, Judiciary and Judicial Procedure, repealed sections 160 to 171 and 1402 of this title and sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of Title 26, enacted provisions set out as notes under sections 160, 1202, 1303, 1311, 1401a, 1516a, 1671, 2111, 2112, 2119, 2135, 2464, 2511, 2531, and 2581 of this title, section 301 of Title 13, and sections 1, 5001, 5061, 5171, and 5173 of Title 26, and amended provisions set out as notes in the Tariff Schedules and under section 2101 of this title. For complete classification of this Act to the Code, see Tables.

§ 2502. Congressional statement of purposes

The purposes of this Act are—

(1) to approve and implement the trade agreements negotiated under the Trade Act of 1974 [19 U.S.C. 2101 et seq.];

(2) to foster the growth and maintenance of an open world trading system;

(3) to expand opportunities for the commerce of the United States in international trade; and

(4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

(Pub. L. 96-39, § 1(c), July 26, 1979, 93 Stat. 146.)

REFERENCES IN TEXT

This Act, referred to in provision preceding par. (1), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, known as the Trade Agreements Act of 1979. For complete classification of this Act to the Code, see section 2501 of this title and Tables.

The Trade Act of 1974, referred to in par. (1), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

§ 2503. Approval of trade agreements

(a) Approval of agreements and statements of administrative action

In accordance with the provisions of sections 2112 and 2191 of this title, the Congress approves the trade agreements described in subsection (c) of this section submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

(b) Acceptance of agreements by the President

(1) In general

The President may accept for the United States the final legal instruments or texts embodying each of the trade agreements approved by the Congress under subsection (a) of this section. The President shall submit a copy of each final instrument or text to the Congress on the date such text or instrument is available, together with a notification of any changes in the instruments or texts, including their annexes, if any, as accepted and the texts of such agreements as submitted to the Congress under subsection (a) of this section. Such final legal instruments or texts shall be deemed to be the agreements submitted to and approved by the Congress under subsection (a) of this section if such changes are—

(A) only rectifications of a formal character or minor technical or clerical changes which do not affect the substance or meaning of the texts as submitted to the Congress on June 19, 1979, or

(B) changes in annexes to such agreements, and the President determines that the balance of United States rights and obligations under such agreements is maintained.

(2) Application of agreement between the United States and other countries

No agreement accepted by the President under paragraph (1) shall apply between the United States and any other country unless the President determines that such country—

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 2136(c) of this title, to the United States.

(3) Limitation on acceptance concerning major industrial countries

The President may not accept an agreement described in paragraph (1), (2), (3), (4), (5), (6), (7), (9), (10), or (11) of subsection (c) of this section, unless he determines that each major industrial country (as defined in section 2136(d) of this title) is also accepting the agreement. Notwithstanding the preceding sentence, the President may accept such an agreement, if he determines that only one major industrial country is not accepting that agreement and the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if—

(A) that country is not a major factor in trade in the products covered by that agreement,

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country, or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

For purposes of this paragraph, the acceptance of an agreement by the European Communities on behalf of its member countries shall also be treated as acceptance of that agreement by each member country, and acceptance of an agreement by all the member countries of the European Communities shall also be treated as acceptance of that agreement by the European Communities.

(c) Trade agreements to which this Act applies

The trade agreements to which subsection (a) of this section applies are the following:

(1) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation).

(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(7) The International Dairy Arrangement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade, including Agreements—

(A) to Modify United States Watch Marking Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches,

(B) to Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) to Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People's Republic.

(Pub. L. 96-39, § 2, July 26, 1979, 93 Stat. 147.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, known as the Trade Agreements Act of 1979. For complete classification of this Act to the Code, see section 2501 of this title and Tables.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

DETERMINATION REGARDING ACCEPTANCE AND APPLICATION OF CERTAIN INTERNATIONAL TRADE AGREEMENTS

1. Pursuant to section 102 of the Trade Act of 1974 (19 U.S.C. 2112(b)), I, through my duly empowered representative, on April 12, 1979, entered into the international agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations. These agreements were:

(i) Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;

(ii) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade;

(iii) Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;

(iv) Agreement on Government Procurement;

(v) Agreement on Technical Barriers to Trade;

(vi) Agreement on Import Licensing Procedures;

(vii) Agreement on Trade in Civil Aircraft;

(viii) International Dairy Arrangement; and

(ix) Arrangement Regarding Bovine Meat.

These agreements are collectively referred to herein as the "MTN agreements".

2. In accordance with sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the MTN agreements were submitted to Congress for its approval. Section 2 of the Trade Agreements Act of 1979 (93 Stat. 147) [this section] approves the MTN agreements and authorizes the President to accept each of the MTN agreements provided that the President determines that all, or all but one, of the major industrial countries (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement. If the President determines that only one major industrial country is not accepting an agreement, the President may nevertheless accept such an agreement if he determines that the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if:

(A) that country is not a major factor in trade in the products covered by that agreement;

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country; or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

3. Section 2 of the Trade Agreements Act of 1979 [this section] also provides that no agreement accepted by the President shall apply between the United States and any other country unless the President determines that such country:

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c) of the Trade Act of 1974 (19 U.S.C. 2136(c)), to the United States.

4. Section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], provides that the President must determine that certain conditions must be met before a country can be considered a "country under the Agreement" and, therefore, entitled to the injury determination provided for in section 703(a) and 705(b) of the Tariff Act of 1930 (93 Stat. 152 and 159) [19 U.S.C. 1671b(a) and 1671d(b)].

5. Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267) authorizes the President to proclaim certain modifications in the Tariff Schedules of the United States if the President determines that the conditions under section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) [subsec. (b) of this section] on acceptance of the Agreement on Trade in Civil Aircraft have been fulfilled.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of sections 2 [this section] and 601(a) of the Trade Agreements Act of 1979 (93 Stat. 147 and 267), herein referred to as "the Act", section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], and section 301 of title 3 of the United States Code do hereby

1. Determine that:

a. With respect to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, and the Agreement on Trade in Civil Aircraft,

(i) in accordance with section 2(b)(1) and (3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d))) is also accepting the agreement with the exception of Japan;

(ii) in accordance with section 2(b)(3) of the Act (93 Stat. 147) [subsec. (b)(3) of this section], the acceptance of these agreements by Japan is not essential to the effective operation of the agreements for that period of time during which Japan is completing its Constitutional procedures to accept the agreements and in light of the stated intention of the Government of Japan to act in the interim in line with the agreements within its existing powers; and

(iii) in accordance with section 2(b)(3)(C) of the Act (93 Stat. 148) [subsec. (b)(3)(C) of this section], a significant portion of United States trade will benefit from these agreements, notwithstanding the anticipated short delay in acceptance by Japan, and it is in the national interest of the United States to accept these agreements.

b. The conditions in section 701(b)(3)(A), (B) and (C) of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671(b)(3)(A), (B) and (C)], will have been met with respect to Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay and Liberia.

c. With respect to the International Dairy Arrangement,

(i) in accordance with section 2(b)(1) and (3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d)) [19 U.S.C. 2136(d)] is also accepting the agreement with the exception of Canada;

(ii) in accordance with section 2(b)(3) of the Act (93 Stat. 147) [subsec. (b)(3) of this section], the acceptance of this agreement by Canada is not essential to the effective operation of the agreement; and

(iii) in accordance with section 2(b)(3)(A) of the Act [subsec. (b)(3)(A) of this section], Canada is not a major factor in trade in the products covered by the agreement.

d. With respect to the Arrangement Regarding Bovine Meat, in accordance with section 2(b)(1) and

(3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d))) is also accepting the agreement.

e. In accordance with section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267),

(i) the conditions under section 2(b) of that Act (93 Stat. 147) [subsec. (b) of this section] on acceptance of the Agreement on Trade in Civil Aircraft have been fulfilled;

(ii) the modifications provided for in section A of Annex II to Proclamation No. 4707 of December 11, 1979 [see note set out under section 2111 of this title], which were authorized by section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267), shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after January 1, 1980; and

(iii) the amendment to section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) provided for in section 601(a)(3) of the Trade Agreements Act of 1979 (93 Stat. 268) shall be effective with respect to entries made under section 466 on and after January 1, 1980.

2. Authorize the United States Special Representative for Trade Negotiations [now United States Trade Representative], or his designee, on behalf of the United States of America,

(a) to sign and accept the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, the Agreement on Trade in Civil Aircraft, the International Dairy Arrangement and the Arrangement Regarding Bovine Meat;

(b) to sign the Agreement on Government Procurement subject to satisfactory completion of negotiations on entity coverage under the Agreement; and

(c) to sign the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade subject to acceptance.

3. [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

JIMMY CARTER.

CHANGE OF NAME

The United States Special Representative for Trade Negotiations was redesignated the United States Trade Representative by Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

DETERMINATION REGARDING MULTILATERAL TRADE NEGOTIATIONS

Memorandum of the President of the United States, dated Dec. 14, 1979, provided:

I have signed the enclosed document concerning certain international trade agreements pursuant to the authority vested in me under the Constitution and laws of the United States, including the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 144) and section 301 of title 3 of the United States Code.

On my behalf, please transmit copies of this document to the Speaker of the House of Representatives and the President of the Senate.

This document shall be published in the Federal Register.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671, 1677, 2414, 2504, 2518, 2571 of this title.

§ 2504. Relationship of trade agreements to United States law

(a) United States statutes to prevail in conflict

No provision of any trade agreement approved by the Congress under section 2503(a) of this title, nor the application of any such provision to any person or circumstance, which is in conflict with any statute of the United States shall be given effect under the laws of the United States.

(b) Implementing regulations

Regulations necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 2112 of this title to implement each agreement approved under section 2503(a) of this title shall be issued within 1 year after the date of the entry into force of such agreement with respect to the United States.

(c) Changes in statutes to implement a requirement, amendment, or recommendation

(1) Presidential determination

Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) Conditions for taking effect under United States law

No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) Recommendations as to application

The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 2112(f) of this title, with respect to a trade agreement.

(4) Congressional procedures applicable

The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 2191 of this title, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 2191 of this title to such bill—

(A) the term "trade agreement" shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term "implementing bill" or "implementing revenue bill", whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

(d) Unspecified private remedies not created

Neither the entry into force with respect to the United States of any agreement approved under section 2503(a) of this title, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

(Pub. L. 96-39, § 3(a)-(c), (f), July 26, 1973, 93 Stat. 148-150.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, known as the Trade Agreements Act of 1979. For complete classification of this Act to the Code, see section 2501 of this title and Tables.

CODIFICATION

As originally enacted section 3 of Pub. L. 96-39 consisted of subsecs. (a) to (c), (e) and (f), without a provision designated as (d). Subsec. (e) amended section 2111(b)(1) of this title and subsec. (f) has been redesignated as (d) for the purposes of codification of this section.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

(a) Presidential waiver of discriminatory purchasing requirements

The President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b) of this section, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of eligible countries and instrumentalities

The President may designate a foreign country or instrumentality for purposes of subsection (a) of this section only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) Modification or withdrawal of waivers and designations

The President may modify or withdraw any waiver granted pursuant to subsection (a) of this section or designation made pursuant to subsection (b) of this section.

(Pub. L. 96-39, title III, § 301, July 26, 1979, 93 Stat. 236.)

EFFECTIVE DATE

Section 309 of Pub. L. 96-39 provided that: "The provisions of this title [this subchapter] shall be effective on the date of enactment of this Act [July 26, 1979], except that—

"(1) the authority of the President to grant waivers under section 303 [section 2513 of this title] shall be effective on January 1, 1980; and

"(2) the authority of the President to grant waivers under section 301 [this section] shall be effective on January 1, 1981."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2512, 2514, 2515 of this title.

§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and (B) which would otherwise be eligible products; and

(2) may take such other actions within his authority as he deems necessary.

(b) Deferrals and waivers

Notwithstanding subsection (a) of this section, but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1) of this section, of products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, except that no such delay shall be granted with respect to the procurement of products of any major industrial country;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 1872(a) of this title, such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) of this section a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure

(A) Presidential determination

If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration

The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

(Pub. L. 96-39, title III, § 302, July 26, 1979, 93 Stat. 236.)

References in Text

Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, referred to in subsec. (c)(2), is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, popularly known as the Buy American Act, which enacted sections 10a to 10c of Title 41, Public Contracts, and enacted provisions set out as notes under 10c of Title 41.

For complete classification of this Act to the Code, see short title note set out under section 10a of Title 41 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2514, 2515, 2516 of this title.

§ 2513. Waiver of discriminatory purchasing requirements with respect to purchases of civil aircraft

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.) popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft. The President may modify or withdraw any waiver granted pursuant to this section.

(Pub. L. 96-39, title III, § 303, July 26, 1979, 93 Stat. 238.)

REFERENCES IN TEXT

Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, referred to in text, is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, popularly known as the Buy American Act, which enacted sections 10a to 10c of Title 41, Public Contracts, and enacted provisions set out as notes under 10c of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

EFFECTIVE DATE

Section effective July 26, 1979, but authority of the President to grant waivers under this section effective on Jan. 1, 1980, see section 309 of Pub. L. 96-39, set out as an Effective Date note under section 2511 of this title.

DELEGATION OF FUNCTIONS

Functions of the President under this section are delegated to the United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

§ 2514. Expansion of the coverage of the Agreement

(a) Overall negotiating objective

The President shall seek in the renegotiations provided for in part IX, paragraph 6, of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 2516(a) of this title.

(b) Sector negotiating objectives

The President shall seek, consistent with the overall objective set forth in subsection (a) of this section and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) Independent verification objective

The President shall seek to establish in the renegotiation provided for in part IX, paragraph 6, of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to part VI, paragraph 9, of the Agreement.

(d) Reports on negotiations

(1) Report in the event of inadequate progress

If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 2512(c)(1) of this title. Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 2512(c) of this title, the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) Legislative recommendations

Taking into account the factors required to be analyzed under section 2512(c) of this title, the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) Annual reports

Each annual report of the President under section 163(a) of the Trade Act of 1974 [19 U.S.C. 2213(a)] made after July 26, 1979 shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) Extension of nondiscrimination and national treatment

Before exercising the waiver authority in section 2511 of this title for procurement not covered by the Agreement on July 26, 1979, the President shall follow the consultation provisions of section 135 [19 U.S.C. 2155] and chapter 6 of title I of the Trade Act of 1974 [19 U.S.C. 2211 et seq.] for private sector and congressional consultations.

(Pub. L. 96-39, title III, § 304, July 26, 1979, 93 Stat. 238.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (e), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 6 of title I of the Trade Act of 1974 is classified generally to part 6 of subchapter I (§ 2211 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2512 of this title.

§ 2515. Monitoring and enforcement

(a) Monitoring and enforcement structure recommendations

In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this subchapter, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 2511(b) of this title.

(b) Rules of origin

(1) Advisory rulings and final determinations

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

(2) Penalties for fraudulent conduct

In addition to any other provisions of law which may be applicable, section 1001 of title 18 shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 2511 of this title or avoiding a prohibition under section 2512 of this title.

(c) Report to Congress on rules of origin

(1) Domestic administrative practices

As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 2511(a) of this title first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) Foreign administrative practices

The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(Pub. L. 96-39, title III, § 305, July 26, 1979, 93 Stat. 239.)

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury under subsec. (b) of this section were transferred to the Secretary of Commerce, to exercise in consultation with the Secretary of the Treasury, by section 5(a)(1)(A) of Reorg. Plan No. 3 of 1979, 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 1582.

§ 2516. Labor surplus area studies

(a) Effect on the economy

Prior to the renegotiations provided for in part IX, paragraph 6, of the Agreement, the President shall prepare and transmit to the Congress a report which assesses the economic impact, including the impact on employment in various regions of the United States, of the waiver of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, in the procurement of products produced in labor surplus areas and of the waiver of procurement set-asides for labor surplus areas.

(b) Effect on targets

On or before July 1, 1981, the President shall prepare and transmit to the Congress a report which assesses the effect of the waiver of the provisions of such title III [41 U.S.C. 10a et seq.] in the procurement of products produced in labor surplus areas and the waiver of procurement set-asides for labor surplus areas on the fulfillment of the objectives of Executive Order 12073, issued August 16, 1978, relating to the encouragement of procurement in labor surplus areas, including an assessment of such waiver on the procurement targets set by the Administrator of the General Services Administration pursuant to such Executive order. On or before January 1, 1980, the President shall begin consultation with and provide interim reports to the congressional committees referred to in section 2512(c)(1) of this title concerning the report required by the preceding sentence.

(Pub. L. 96-39, title III, § 306, July 26, 1979, 93 Stat. 240.)

REFERENCES IN TEXT

Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, and such title III, referred to in text, is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, popularly known as the Buy American Act, which enacted sections 10a to 10c of Title 41, Public Contracts, and enacted provisions set out as notes under 10c of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

Executive Order No. 12073, referred to in subsec.(b), is Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, which is set out as a note under section 401 of Title 41, Public Contracts.

Section Referred to in Other Sections

This section is referred to in section 2514 of this title.

§ 2517. Availability of information to Members of Congress designated as official advisers

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 2211 of this title information compiled by the Committee on Government Procurement under part VI, paragraph 9, of the Agreement.

(Pub. L. 96-39, title III, § 307, July 26, 1979, 93 Stat. 240; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" pursuant to Reorg. Plan No. 3 of 1979, § 1(1)(b), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2518. Definitions

As used in this subchapter—

(1) Agreement

The term "Agreement" means the Agreement on Government Procurement referred to in section 2503(c) of this title, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft

The term "civil aircraft and related articles" means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) Developed countries

The term "developed countries" means countries so designated by the President.

(4) Eligible products

(A) In general

The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) Rule of origin

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(5) Instrumentality

The term "instrumentality" shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) Least developed country

The term "least developed country" means any country on the United Nations General Assembly list of least developed countries.

(7) Major industrial country

The term "major industrial country" means any such country as defined in section 2136 of this title and any instrumentality of such a country.

(Pub. L. 96-39, title III, § 308, July 26, 1979, 93 Stat. 241.)

References in Text

Section 601(a)(2), referred to in par. (2), is section 601(a)(2) of Pub. L. 96-39, title VI, July 26, 1979, 93 Stat. 267, which directed a duty rate of "Free" in the rate column numbered 1 of the Tariff Schedules of the United States for articles classified under specified items between 518.51 and 772.65 which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles were certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States. See Publication of Tariff Schedules note set out under section 1202 of this title.

Section Referred to in Other Sections

This section is referred to in section 2515 of this title.

SUBCHAPTER II—TECHNICAL BARRIERS TO TRADE (STANDARDS)

Part A—Obligations of the United States

§ 2531. Certain standards-related activities

Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

(Pub. L. 96-39, title IV, § 401, July 26, 1979, 93 Stat. 242.)

EFFECTIVE DATE

Section 454 of Pub. L. 96-39 provided that: "This title [this subchapter] shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date."

[The Agreement on Technical Barriers to Trade has entered into force with respect to the United States]

§ 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) Nondiscriminatory treatment

Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) Use of international standards

(A) In general

Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) Application of requirement

For purposes of this paragraph, the following apply:

(i) International standards not appropriate

The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) Regional standards

In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii) of this title.

(3) Performance criteria

Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) Certification access for foreign suppliers

Each Federal agency shall, with respect to any certification system used by it, permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

(Pub. L. 96-39, title IV, § 402, July 26, 1979, 93 Stat. 242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2533 of this title.

§ 2533. State and private standards-related activities

(a) In general

It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) Presidential action

The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 2532 of this title, and of procedures that provide for notification, participation, and publication with respect to such activities.

(Pub. L. 96-39, title IV, § 403, July 26, 1979, 93 Stat. 243.)

PART B—FUNCTIONS OF FEDERAL AGENCIES

§ 2541. Functions of Trade Representative

(a) In general

The Trade Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this subchapter.

(b) Negotiating functions

The Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Trade Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) Cross reference

For provisions of law regarding general authority of the Trade Representatives with respect to trade agreements, see section 2171 of this title.

(Pub. L. 96-39, title IV, § 411, July 26, 1979, 93 Stat. 243; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2542. Establishment and operation of technical offices

(a) Establishment

(1) For nonagricultural products

The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to nonagricultural products.

(2) For agricultural products

The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to agricultural products.

(b) Functions of offices

The President shall prescribe for each technical office established under subsection (a) of this section such functions as the President deems necessary or appropriate to implement this subchapter.

(Pub. L. 96-39, title IV, § 412, July 26, 1979, 93 Stat. 244.)

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the Secretary of Commerce regarding the technical office established under subsec. (a)(1) of this section, and to the Secretary of Agriculture regarding the technical office established under subsec. (a)(2) of this section, see section 1-103(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2544 of this title.

§ 2543. Representation of United States interests before international standards organizations

(a) Oversight and consultation

The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Trade Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c) of this section.

(b) Representation of United States interests by private persons

(1) Definitions

For purposes of this subsection—

(A) Organization member

The term "organization member" means the private person who holds membership in a private international standards organization.

(B) Private international standards organization

The term "private international standards organization" means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

(2) In general

Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) Inadequate representation

If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 2547 of this title.

(4) Action by organization member

If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) Action by Secretary concerned

If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) Representation of United States interests by Federal agencies

With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

(Pub. L. 96-39, title IV, § 413, July 26, 1979, 93 Stat. 244; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsec. (a)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2545 of this title.

§ 2544. Standards information center

(a) Establishment

The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) Functions

The standards information center shall—

(1) serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities, whether such standards, systems, or activities are public or private, domestic or foreign, or international, regional, national, or local;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 2542(a)(2) of this title within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 2542 of this title as may be requested by those offices in carrying out their functions.

(Pub. L. 96-39, title IV, § 414, July 26, 1979, 93 Stat. 245.)

§ 2545. Contracts and grants

(a) In general

For purposes of carrying out this subchapter, and otherwise encouraging compliance with the Agreement, the Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 2543 of this title, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) Terms and conditions

Any contract entered into, or any grant made, under subsection (a) of this section shall be subject to such terms and conditions as the Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) Limitations

Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) Audit

Each recipient of a grant or contract under this section shall make available to the Trade Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

(Pub. L. 96-39, title IV, § 415, July 26, 1979, 93 Stat. 246; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2546. Technical assistance

The Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this subchapter.

(Pub. L. 96-39, title IV, § 416, July 26, 1979, 93 Stat. 247; 1979 Reorg. Plan No. 3, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2547. Consultations with representatives of domestic interests

In carrying out the functions for which responsible under this subchapter, the Trade Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 2155 of this title, that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

(Pub. L. 96-39, title IV, § 417, July 26, 1979, 93 Stat. 247; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

Change of Name

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2543, 2553 of this title.

PART C—ADMINISTRATIVE AND JUDICIAL PROCEEDINGS REGARDING STANDARDS-RELATED ACTIVITIES

SUBPART 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

Subpart Referred to in Other Sections

This subpart is referred to in section 2561 of this title.

§ 2551. Right of action

Except as provided under this subpart, the provisions of this part do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

(Pub. L. 96-39, title IV, § 421, July 26, 1979, 93 Stat. 247.)

Effective Date

Part effective Jan. 1, 1980, if the Agreement enters into force with respect to the United States by that date, see section 454 of Pub. L. 96-39, set out as an Effective Date note under section 2531 of this title.

§ 2552. Representations

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

(Pub. L. 96-39, title IV, § 422, July 26, 1979, 93 Stat. 247; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in par. (2) and provision following par. (2), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2553, 2561 of this title.

§ 2553. Action after receipt of representations

(a) Review

Upon receipt of any representation made under section 2552 of this title, the Trade Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 1872(a) of this title;

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 2547 of this title.

(b) Resolution

The Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

(Pub. L. 96-39, title IV, § 423, July 26, 1979, 93 Stat. 247; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsecs. (a) and (b), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2554. Procedure after finding by international forum

(a) In general

If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 1872(a) of this title shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) Cross reference

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 2411 of this title.

(Pub. L. 96-39, title IV, § 424, July 26, 1979, 93 Stat. 248.)

SUBPART 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

§ 2561. Findings of reciprocity required in administrative proceedings

(a) In general

Except as provided under subpart 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Trade Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 2552(2) of this title; and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) Exemptions

This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in section 12(a) of title 15; or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

(Pub. L. 96-39, title IV, § 441, July 26, 1979, 93 Stat. 248.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, in subsec. (a), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2562. Consideration of standards-related activities by an international forum

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

(Pub. L. 96-39, title IV, § 442, July 26, 1979, 93 Stat. 248.)

PART D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 2571. Definitions

As used in this subchapter—

(1) Agreement

The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2503(a) of this title.

(2) Certification system

The term "certification system" means a system—

(A) for determining whether a product conforms with product standards applicable to that product; and

(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system.

(3) Federal agency

The term "Federal agency" means any of the following within the meaning of chapter 2 of part I of title 5:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) International certification system

The term "international certification system" means a certification system that is adopted by an international standards organization.

(5) International standard

The term "international standard" means any standard that is promulgated by an international standards organization.

(6) International standards organization

The term "international standards organization" means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and—

(i) all Parties to the Agreement, or

(ii) some but not all Parties of the Agreement; and

(B) that is engaged in international standards-related activities.

(7) International standards-related activity

The term "international standards-related activity" means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international certification system, or both.

(8) Party to the Agreement

The term "Party to the Agreement" means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.

(9) Private person

The term "private person" means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) Product

The term "product" means any natural or manufactured item.

(11) Secretary concerned

The term "Secretary concerned" means the Secretary of Commerce with respect to functions under this subchapter relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this subchapter relating to agricultural products.

(12) Trade Representative

The term "Trade Representative" means the United States Trade Representative.

(13) Standard

The term "standard" means any of the following, and any amendment or change to any of the following:

(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B).

(14) Standards-related activity

The term "standards-related activity" means the development, adoption, or application of any standard or any certification system.

(15) State

The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) State agency

The term "State agency" means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) United States

The term "United States", when used in a geographical context, means all States.

(Pub. L. 96-39, title IV, § 451, July 26, 1979, 93 Stat. 249; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

REFERENCES IN TEXT

Chapter 2 of part I of title 5, referred to in par. (3), probably means chapter 1 of part I of title 5, which is classified to section 101 et seq. of Title 5, Government Organization and Employees, and which relates to organization of agencies.

CHANGE OF NAME

"Trade Representative" and "United States Trade Representative" were substituted for "Special Representative" and "Special Representative for Trade Negotiations", respectively, in par. (12), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

EFFECTIVE DATE

Part effective Jan. 1, 1980, if the Agreement enters into force with respect to the United States by that date, see section 454 of Pub. L. 96-39, set out as an Effective Date note under section 2531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2532 of this title.

§ 2572. Exemptions

This subchapter does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

(Pub. L. 96-39, title IV, § 452, July 26, 1979, 93 Stat. 250.)

§ 2573. Reports to Congress on operation of agreement

As soon as practicable after the close of the 3-year period beginning on the date on which this subchapter takes effect, and as soon as practicable after the close of each succeeding 3-year period, the Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

(Pub. L. 96-39, title IV, § 453, July 26, 1979, 93 Stat. 250; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381.)

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 2581. Auction of import licenses

(a) In general

Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure[1] against inequitable sharing of imports by a relatively small number of the larger importers.

(b) Definition of import license

For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after July 26, 1979 under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. 1701-1706),

(3) authority under the headnotes of the Tariff Schedules of the United States, but not including any quantitative restriction imposed under section 22 of the Agricultural Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1-44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

(Pub. L. 96-39, title XI, § 1102, July 26, 1979, 93 Stat. 307.)

REFERENCES IN TEXT

The International Emergency Economics Powers Act, referred to in subsec. (b)(2), is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Trading With the Enemy Act, referred to in subsec. (b)(4), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Section 1114 of Pub. L. 96-39 provided that: "Except as otherwise provided in this title, this title [enacting this subchapter, amending the Tariff Schedules of the United States and sections 1315, 1337, 2112, 2119, 2131, 2155, 2192, 2253, 2432, 2434, 2435, 2462, 2463, 2464, 2481, and 2486 of this title, section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 13, Census, enacting provisions set out as notes under sections 2111, 2112, and 2464 of this title and 301 of Title 13, and amending a provision set out as a note under section 2101 of this title] shall take effect on the date of enactment of this Act [July 26, 1979]."

§ 2582. Determinations by Secretary of Commerce

(a) Determinations by Secretary of Commerce

(1) Impact of concessions

Upon the request of the government of a possession of the United States, the Secretary of Commerce shall determine before January 1, 1980—

(A) whether a concession was granted by the United States in the Tokyo Round of the Multilateral Trade Negotiations on an article produced in that possession on which excise taxes are levied by the United States, and

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[1] So in original. Probably should be "ensure".

(B) whether the sum of the amounts transferred and paid over to that possession attributable to such taxes for calendar year 1978 were equal to, or greater than, an amount equal to 10 percent of the tax revenues (not including revenues associated with petroleum or petroleum products) of that possession for 1978.

(2) Annual determinations

If the determinations of the Secretary under subparagraphs (A) and (B) of paragraph (1) are affirmative, then he shall determine, within 3 months after the close of each of the fiscal years 1980 through 1984, whether that concession contributed importantly to a reduction in the sum of the amounts transferred and paid over to that possession on account of such excise taxes for the most recently closed fiscal year. In making his determination, the Secretary shall take into account the extent to which other factors may have contributed to the reduction. The Secretary shall determine the amount of the reduction by subtracting the amount so transferred and paid over for the fiscal year from the amount which would have been transferred and paid over for the fiscal year if the products of the possession with respect to which the excise tax is imposed had maintained a share of the United States market for that product which was the share of the United States market for the product for fiscal year 1979.

(b) Inclusion of compensatory amount in Budget of the United States

If the Secretary determines an amount under subsection (a)(2) of this section, he shall advise the President of that amount and the President may include, in the first Budget or Supplemental Budget submitted under the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], after receiving such advice, an amount, equal to the amount so determined by the Secretary, for payment to the government of that possession to offset the amount of the reduction. If the President includes an amount different from the amount determined by the Secretary or no amount, the President shall promptly submit a report to the Congress setting forth his reasons for submitting such a different amount. Upon appropriation, such sums shall be paid promptly to the government of such possession. There are authorized to be appropriated such sums as may be necessary for the purposes of this section for fiscal years 1981 through 1985.

(c) Report to the Congress

On January 31, 1984, the President shall report to the Congress on the operation of this section, the reductions in revenues determined under this section, and any reductions which are likely to occur in fiscal years beginning after September 30, 1984. If he determines that such action is warranted, he shall recommend to the Congress in such report an extension of the application of this section to such fiscal years.

(Pub. L. 96-39, title XI, § 1112, July 26, 1979, 93 Stat. 316.)

REFERENCES IN TEXT

The Budget and Accounting Act, 1921, referred to in subsec. (b), is act June 10, 1921, ch. 18, 42 Stat. 20, as amended, which is classified principally to chapter 1 (§ 1 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see section 1 of Title 31 and Tables.